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2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

4 01 COMMUNIQUE LABORATORY,)
INC.,)
5) Docket No. 1:10-cv-1007
Plaintiff,) Alexandria, Virginia
6)
v.) March 18, 2013
7)
LOGMEIN, INC.,) Volume I
8) (p.m. session)
Defendant.)

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11 TRANSCRIPT OF TRIAL

12 BEFORE THE HONORABLE CLAUDE M. HILTON

13 UNITED STATES DISTRICT JUDGE

14 AND A JURY

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25 Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

1		<u>I N D E X</u>			
2		<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
3	<u>FOR THE PLAINTIFF:</u>				
4	A. Cheung	103	131	--	--
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P R O C E E D I N G S

MR. STONER: Thank you, Your Honor. Very briefly, our concern is that 01 Communique, Mr. Shunk in his opening statement, violated the representation 01 made to this court in a prior hearing about what they would not do in this trial.

On the March 1st hearing on the motions in limine, 01 represented to the Court, quote, we will not argue that the reexamination has any probative value to validity, unquote. Mr. Shunk did just that today, saying that Andrew's patent was found to be valid by the United States Patent Office in the reexamination.

We request a curative instruction to the jury in the nature of exactly what they represented to Your Honor, which is that the reexamination does not have any probative value to the validity of this patent.

THE COURT: What do you want to say?

MR. SHUNK: Your Honor, if I may, I chose my words very carefully on this in order to stay within Your Honor's -- within my representation and what I understood Your Honor to understand. I said that there was a reexamination. I explained that the reexamination at the patent office level had terminated in 01's favor. I immediately mentioned that there was an appeal by Citrix. And then I said the words, Today the '479 patent stands as valid as it was on the day that it issued, which is exactly true.

1 I did not suggest, I don't believe, Your Honor, that
2 there was any additional probative value from the reexamination.
3 But I think that to tell the jury there was a reexamination,
4 they're going to sit and wonder, well, gosh, how did it turn
5 out. And I think they're entitled to know how it turned out
6 without arguing that it has any legal importance to their
7 decision here.

8 THE COURT: I think that's correct. I think that went
9 more to the timing of why they filed suit and why they didn't.
10 There's an issue here of how long they waited to file the suit,
11 and you made that in your opening statement. And then I -- my
12 recollection of the argument is is that's what that went to as
13 opposed to the validity of the patent.

14 That never occurred to me, that it did go to the
15 validity, what I heard him say, and I thought all of it went to
16 the question of timing of when was the suit filed and when was
17 it not filed. But anyhow, I'll deny your motion for a curative
18 instruction at this point anyway.

19 MR. STONER: Your Honor, I mean, we understand that's
20 their excuse for delay, and that's fair game in this trial.
21 It's not true, but we'll deal that. But what Mr. Cheung said,
22 he did not quote, was, quote --

23 I'm sorry. Andrew's patent was found to be valid by
24 the United States Patent office. That's exactly contrary to
25 what they represented to this Court they would not do.

1 THE COURT: Well, that's -- I don't know that that --
2 there's no question the patent office found it valid. I mean, I
3 don't see how that goes to the validity at all. We know the
4 patent office found it valid the first time and then when they
5 reexamined it they found it valid. Didn't they?

6 MR. SHUNK: Yes, sir.

7 MR. STONER: The issue is not what happened in the
8 original prosecution. It's in the reexamination. And they said
9 they would not suggest that reexamination was probative to
10 validity. They did just that. That's our issue, Your Honor.
11 It's suggesting to the jury that because there's reexamination
12 and it's ongoing in some sense, that the patent office has
13 confirmed validity. And there's much law. That was the subject
14 of the motion in limine, saying that's improper, and they agreed
15 that was improper, but then they --

16 THE COURT: They agreed they wouldn't argue it. So in
17 the first place, we can't have argument in an opening statement.
18 The only thing he did was tell them that it was valid. The
19 patent office said it was valid. It would be inaccurate to say
20 anything else. And I still -- my recollection of what he said
21 at the time was all in the context of the timing as to when they
22 filed suit on the patent.

23 I just don't think the objection is well taken. If
24 they do start to argue it, it could be something else, but I
25 take it that they have not argued it, which you have to tell --

1 if you talk about the reexamination, you have to tell them it
2 was approved.

3 MR. STONER: Well, we don't. I mean, they represented
4 they wouldn't. And --

5 THE COURT: Well, they do because you're raising the
6 issue of the timeliness of file. So they have to. They would
7 be remiss if they didn't, wouldn't they?

8 MR. STONER: I don't think so, Your Honor, but I
9 understand your ruling.

10 THE COURT: Yes, you do. You don't want to admit it.
11 All right.

12 MR. STONER: I --

13 THE COURT: That's all right. I don't mind if you
14 disagree with me.

15 MR. STONER: That's okay. We understand your ruling,
16 Your Honor. Thank you.

17 THE COURT: All right. Bring in the jury.

18 (The jury enters at 2:24 p.m.)

19 THE COURT: Thank you. You can have a seat. These
20 people are just standing for you. Get them to sit down. Let's
21 move along with this witness. This witness has been on the
22 stand for quite a while now. Let's move along with this.

23 MR. SHUNK: Yes, Your Honor.
24
25

1 DIRECT EXAMINATION

2 BY MR. SHUNK:

3 Q. Mr. Cheung, I'd like to move right into the patent now, the
4 patent itself.

5 Did you review the draft patent application before it was
6 filed?

7 A. Yes, I did.

8 Q. And did you review amendments of the application and so
9 forth as it was being processed through the patent office?

10 A. Yes.

11 Q. I'd like you to take Exhibit 1, the '479 patent, and look in
12 particular at figure 1 that appears on the third page of the
13 exhibit.

14 MR. SHUNK: And, Your Honor, I would ask that the
15 marshal show the jury our foam board demonstrative at this
16 point. It is the diagram Fig. 1 from the patent.

17 THE COURT: All right.

18 BY MR. SHUNK:

19 Q. Mr. Cheung, does the board that the jury sees fairly and
20 accurately reproduce the Fig. 1 drawing that you're looking at
21 in the patent?

22 A. Yes, it does.

23 MR. SHUNK: If I could ask the marshal to flip over the
24 first page, which is the same drawing with some color added to
25 it, in order to speed up the examination process.

A. Cheung - Direct

1 BY MR. SHUNK:

2 Q. Is there any color, Mr. Cheung, in the Fig. 1 drawing in the
3 patent itself?

4 A. In the original drawing there were no color.

5 Q. Okay. So that's been added for purposes of this
6 examination.

7 Tell the jury -- well, first of all, what is this a drawing
8 of?

9 A. This is the -- the drawing representing the schematic of the
10 invention.

11 Q. Okay. Does it depict anywhere the host computer?

12 A. Yes, it does. Let me use that pointer again.

13 The host computer, once again, was -- recapping a little
14 bit, was the personal computer that you would be remotely
15 accessing. That blue box here is the -- the personal computer.

16 Q. Let me ask you a couple of questions about this schematic
17 now so we understand what we're looking at.

18 There's a number 14 pointing to some sort of an empty box.
19 Do you see that?

20 A. Yes.

21 Q. Tell the jury what that is.

22 A. This is actually representing the personal computer.

23 Q. Okay.

24 A. Yeah.

25 Q. Now, you see there is a line that comes down from that and a

1 box that says communication facility.

2 A. Yes. This box.

3 Q. What is a communication facility?

4 A. The communication facilities is the software that reside in
5 the personal computer that allow you to talk to somewhere over
6 on the Internet, such as the -- the green box.

7 Q. Okay. And there's a box under that that says means for
8 communication of location. What does -- what is that?

9 A. Yeah, this is -- as the English word says, is the way of
10 communicating the location.

11 Q. So why did you use the word facility rather than the word
12 software that you just used in your -- in your description?

13 A. Basically, software and facilities are just two different
14 words. Means the same thing in the world of software
15 developers.

16 Q. So the -- the two rectangular boxes with words on them, are
17 they supposed to be separate devices from the host computer or
18 are they the same thing as the host computer?

19 A. They are software inside the -- the host or the personal
20 computer.

21 Q. Now, there's a box that says name. What is that?

22 A. Like identifier, for example. Identifying the personal
23 computer.

24 Q. Okay. Now, the yellow box, what is that?

25 A. This yellow box represents the remote computer. In my

1 testimony, I have been referring to your laptop computer or the
2 computer at the hotel business center where you will be
3 accessing your office or home computer remotely.

4 Q. The green box, sir, what is that?

5 A. The green box represents the locator server, which is the
6 middleman in my example, the one that connects creating
7 communication session and creating communication channel between
8 the office computer, the personal computer, and the remote
9 computer in this way.

10 Q. I see in the green area a box that says location facility.
11 What is that?

12 A. This is the software that resides inside the locator server
13 that basically the engine driving that locator -- the location
14 server to work.

15 Q. Now, there's kind of a -- I don't mean any insult by this,
16 Mr. Cheung, but there's kind of a badly drawn circle in the
17 middle of the diagram. What is that supposed to be, number 16?

18 A. This thing?

19 Q. Yes.

20 A. This was drawn as representation of the Internet. And now
21 fast-forward 15 years, people call it the cloud. So it actually
22 looks like a cloud.

23 Q. Okay. Now, what are the lines that go back and forth
24 between the three boxes?

25 A. Those lines represent the -- the communication -- the

1 communication channel. So it represents that the location
2 server or the gateway server and whatever you call it is
3 creating that communication between the personal computer and
4 the remote computer in such a way.

5 Q. Just to take this back to the video we saw right before
6 lunch, the -- the -- I recollect that that was done by you in
7 Arlington accessing your computer in Toronto.

8 Which box would represent the computer in Toronto?

9 A. This blue box, personal computer, represents the computer in
10 Toronto where I was remotely accessing.

11 Q. What about -- which box would represent the computer in
12 Arlington that you were actually typing on the keyboard of?

13 A. The yellow box represents the remote computer or laptop that
14 I was remotely accessing from in my Arlington office.

15 Q. Now, did the communication between the remote and the host
16 that we saw in the video, did it go through the I'm InTouch
17 locator server?

18 A. As it represents here, it does. It goes through in this
19 manner, pass through the locator server into the office computer
20 and back and forth.

21 Q. And where physically is the locator server for the I'm
22 InTouch product?

23 A. The locator server is physically in Toronto in the -- our
24 data center, which is an official data center run by Allstream
25 AT&T in Toronto. And it is, you know, those kind of public data

1 center that hosts server like that, not our premises.

2 Q. Now, one other question about this drawing, sir, and that is
3 I remember your testimony about a ping.

4 Can you show where that would happen in this diagram?

5 A. Yeah. The ping would happen from the personal computer, the
6 blue box, generated to the green locator server in a regular
7 basis doing this periodically or intermittently.

8 Q. Now, how many computers are shown in this patent Fig. 1 in
9 the -- in the green box for the locator server?

10 A. Well, actually, this is an interesting question because this
11 is a schematic of the system, not a photograph of the system.

12 Of course, when you are describing, you draw a box here, the
13 same thing that if you wanted to describe a factory, you -- I
14 would assume you wouldn't draw all those assembly workers in the
15 factory. So there's a box here, but then all the software
16 developer will understand at the time of the invention that the
17 location box, the locator server, can be one or more than one
18 computer box, and the software in it, the location facilities,
19 can be subdivided into different pieces, some in one box, some
20 in other box, but they all work together to perform the job.

21 Q. Now, what you just said in your description, did you
22 actually say that in your patent?

23 A. Very clearly. I envisioned that it could be an issue so I
24 specifically said that very clearly in the patent application.

25 Q. I would like for you to look for that language in Exhibit 1,

1 please. And while you're doing that --

2 MR. SHUNK: Your Honor, thank you for letting us show
3 this to the jury. We're done with it, if the marshal wishes to
4 take it down.

5 BY MR. SHUNK:

6 Q. Have you been able to find in the patent where you talk
7 about multiple computers for the locator server?

8 A. Yes. Absolutely. First of all, it is in column 5 of the
9 patent description, line 23 to 24. It says very clearly word by
10 word server computer 12 may comprise one or more computer as is
11 well known.

12 Q. And was that a quote from the patent?

13 A. It was actually word by word from the patent description.

14 Q. Is there anywhere else you want to refer --

15 A. And the other place is column number 2, line 39 to line 46.
16 There it says, also by portal, quote/quote, what is generally
17 understood is a means for facilitating communication from
18 point A to point B. More than one interconnected computer or
19 process may cooperate to provide a single portal. For example,
20 a first computer or process comprising the portal may provide
21 means for locating B at least once. Thereafter, communication
22 between A and B may be facilitated through a second computer or
23 process independent of the first computer or process.

24 Q. Have you heard of the phrase distributed software used in
25 the computer software industry?

1 A. Yes, sir, I do.

2 Q. What does it mean?

3 A. In English terms, all I can explain in everyday language is
4 that it's like load balancing. Load balancing is to, like the
5 word says, handle heavy loads. There are many ways that you can
6 configure load balancing. One example is like you can have one
7 physical computer containing all the locator facility, the
8 software necessary to run it, and then you have multiple box
9 same way, but they're all together to share the load.

10 Another way to configure would be that you kind of subdivide
11 it, the locator server software, into different pieces, some of
12 which is located in one computer, some in another, some in
13 another, but they all work together to perform the same job.
14 You can view it as like -- use that analogy again -- like a
15 factory.

16 You can handle a different load by having assembly -- each
17 assembly worker assembling the product from start to finish, but
18 then you can have multiple -- many assembly worker doing the
19 same thing at the same time producing many products, or you can
20 do it in the way that each assembly worker is doing a particular
21 part and then they all work together to produce many products,
22 those similar.

23 Q. Now, in the parts of your patent that you read, I didn't
24 hear the word distributed. Is there any difference between what
25 you read from the patent and what you just described now as

1 distributed?

2 A. It's basically describing distributed. What I read about in
3 the column -- column 5, line 23 to line 24, as well as column 2,
4 line 39 to 46, was describing exactly what I said.

5 Q. Now, how is the locator server within the I'm InTouch
6 service, your service, how is that configured?

7 A. In our service we configuring, more or less, that second
8 way, as I mentioned, using that analogy like a factory was like
9 different assembly worker doing different things, but they're
10 all collectively working together. We have one server handling
11 the web access, the other server handling database, keeping
12 track of all the subscribers, the users, the location, and
13 another server called the gateway or connection server basically
14 connect them together. They, all of them, working together
15 collectively to perform that location server job.

16 Q. How long has 01 been doing the configuration that way with
17 its I'm InTouch service?

18 A. I would say pretty much since day one.

19 Q. Okay. So 2000, 2001?

20 A. Yes.

21 Q. Was that unusual to do things that way back in 2000, to
22 distribute software like that?

23 A. No. It's not unusual. Like load balancing is well known at
24 that time. And I will say software engineer at the time would
25 very well know about how you can -- you can expand one server

1 computer into multiple boxes in order to handle the additional
2 loads.

3 Q. Have you ever charged users to download the I'm InTouch
4 software?

5 A. Never.

6 Q. What did you charge for the service in 2000?

7 A. We charged \$10, 9.95, \$9.95 per month or \$99 a year.

8 Q. What do you charge today?

9 A. We charge the same. We haven't changed our price since day
10 one.

11 Q. Now, before lunch -- I want to clear something up. Before
12 lunch I asked you whether the user had to download anything on
13 the remote computer, the laptop, the hotel computer, to use your
14 service. And I believe you answered no.

15 Does anything -- regardless of what the user has to do, does
16 anything get downloaded onto that laptop while the user is using
17 it?

18 A. Before the connection was started something would get
19 downloaded, but it is not something that the user has to
20 download first before that happen. When they want to do remote
21 access, all they need to find is a computer, laptop computer,
22 whatsoever, with a browser there.

23 Q. Okay. What happens to that, whatever it is that gets
24 downloaded onto the laptop computer, once the session is over?

25 A. It would be erased.

1 Q. Would the user even see that the -- the application was
2 being downloaded?

3 A. The user won't see that. It is transparent.

4 Q. Is there a particular name for that kind of transitory
5 application?

6 A. There's no name for that. We call it a viewer something,
7 yeah.

8 Q. Now, I've been asking you about the pricing for the product.
9 Is there a name for that kind of business model where you don't
10 charge for the software, but you do charge for the service?

11 A. Oh, actually, in recent years people has been labeling that
12 as S-A-A-S, or what people call SaaS. It is software as a
13 service is what's being labeled in recent years.

14 Q. Now, you didn't invent software as a service, did you?

15 A. Oh, absolutely not. Yeah.

16 Q. Okay. So were any other companies offering a remote access
17 service as software as a service in 2000 that you know of?

18 A. No, not that I'm aware of.

19 Q. How successful has the software as a service business model
20 been in the remote access services field?

21 A. In the early years, just like any new technology, was the --
22 what we call the infant stage of those kind of service or
23 product. It was not successful -- or I shouldn't say not
24 successful. It wasn't very popular. And -- but in recent years
25 it has been developing into a very major offering by many

1 different software offering on the planet.

2 Q. Are you familiar with another remote access service today
3 that's called GoToMyPC?

4 A. Yes, I am.

5 Q. Who provides that service?

6 A. That service today is provided by a company called Citrix.

7 Q. When it first came out, do you know who provided the
8 service?

9 A. Yes. It was -- it was originally provided by a company
10 called Expertcity until they were acquired by Citrix in 2004.

11 Q. Which of those services, I'm InTouch or GoToMyPC, was
12 offered first to the public commercially?

13 A. I'm InTouch was offering first.

14 Q. When exactly did 01 introduce the I'm InTouch service?

15 A. We first publicly display the -- or announced the product in
16 a press conference September of 2000 in Toronto. And then a few
17 months after that, we announced the product are commercially
18 available at a computer trade show, the largest computer trade
19 show in the United States called COMDEX November 2000.

20 Q. Were there any other competitors when 01 released the I'm
21 InTouch service in November of 2000 in remote access services?

22 A. No.

23 Q. You said that -- well, you've been talking about GoToMyPC.
24 When you first saw GoToMyPC, did you look into it?

25 A. I looked into GoToMyPC -- I should say first saw it within a

1 few months' timeframe when I -- when it came to my attention.

2 Q. Did you do any analysis of the GoToMyPC product?

3 A. Yes, I did.

4 Q. What did you do to analyze that service?

5 A. I cannot remember details, but I can remember some very
6 fundamental points. I looked at basically two things. I looked
7 at literature, white paper from the website, things like that,
8 to see how it works. And then I also had downloaded and used
9 the application putting like a protocol analyzer to monitor
10 traffic traveling back and forth between the personal computer
11 and the GoToMyPC locator server as well as between the remote
12 computer and the GoToMyPC locator server and monitor those
13 traffic.

14 Q. What did you see when you looked at all that information?

15 A. I saw that the personal computer was generating pings to the
16 GoToMyPC locator server pretty much the same way the I'm InTouch
17 service did.

18 Q. What did you do about that?

19 A. We -- at that time we really cannot do anything because our
20 patent application was still in the hands of the patent office.

21 Q. Well -- so when was that, roughly?

22 A. That was roughly 2002.

23 Q. And to refresh our recollection, when was it that the patent
24 issued?

25 A. It was issued in August of 2005.

1 Q. Okay. Well, you didn't have the patent out yet. You saw
2 what Citrix was doing. Did you do anything to try to speed up
3 the patent office?

4 A. We did two things. First of all, what we did was file a
5 request to the patent office asking them to expedite in light of
6 a potential infringer, and the second thing was we asked for an
7 update of the patent application process. And from this update
8 request, we learned that the patent office actually had lost our
9 application file.

10 Q. What -- what did you do to fix that problem?

11 A. We asked them to recreate the application file and they did.
12 So the application kind of continued to proceed after that.

13 Q. I'd like to get a specific date on this. So could you look
14 at Plaintiff's Exhibit 1 and tell the jury the exact day on
15 which the patent issued.

16 A. Yeah. The patent was issued -- let me look at it exactly --
17 was issued on August 9th of 2005.

18 Q. After the patent issued, did you provide notice to the
19 public about the patent?

20 A. Yes. Absolutely. What we did was we marked our product
21 using this patent on like the box, the website, and things like
22 that.

23 Q. Okay. And would a person who logged onto the I'm InTouch
24 website, would they see the patent number?

25 A. Yes, they would see the patent number.

1 Q. What about a person signing up for the I'm InTouch service,
2 would they see the patent number?

3 A. Yes, they would see the patent number.

4 Q. Has 01 marked substantially all of the services it provides
5 with the '479 patent number since the time the patent issued?

6 A. Yes, we did.

7 Q. Once it issued, Andrew, did 01 take any action regarding
8 Citrix and the GoToMyPC service that we just talked about?

9 A. Once it issued, we went ahead and launched a patent
10 infringement legal action against Citrix.

11 Q. Where was that suit filed?

12 A. That was filed in Ohio.

13 Q. I know you're not a lawyer, Andrew, but can you tell the
14 jury what you understand to be the status of that lawsuit
15 against Citrix?

16 A. Yeah. My understanding of the status was that it was put on
17 hold by the -- the Ohio judge.

18 Q. What's your understanding of why the Ohio judge put the suit
19 on hold?

20 A. Because soon after we filed the lawsuit against Citrix,
21 Citrix challenged my patent to the patent office. So the Ohio
22 judge decided to put this lawsuit on hold pending the decision
23 from the reexamination process.

24 Q. Do you remember when Citrix's challenge to your patent was
25 filed at the patent office?

1 A. This one I remember vividly. It was December the 7th of
2 2007.

3 Q. How do you know that?

4 A. Because I found out the next day, on December 8th, which is
5 my birthday.

6 Q. Well, what do you understand to be the word or the correct
7 name for the kind of challenge that Citrix has done?

8 A. It is called interparty reexamination.

9 Q. Did you participate yourself in the reexamination?

10 A. As the CEO of the company, I review paper before they file.
11 But since I'm not a patent attorney, I do not involve in the
12 actual reexamination process. Our patent attorney handles that
13 for us.

14 Q. Okay. What was the nature of the challenge to your patent,
15 generally? Not a detailed legal or technical, but just
16 generally what was the challenge?

17 A. In general, the challenge was that the Citrix provided to
18 the patent office a total of 12 different prior art references,
19 saying that they would likely predate our invention and would
20 invalidate the patent.

21 Q. Did there come a day when you learned what the result, at
22 least at the level of the patent office, was on this
23 reexamination?

24 A. It was in -- not until around -- I would say July 7th --
25 that's the exact date -- July 7th of 2010, that the patent

1 office validated all the claims of the patent and denied
2 Citrix's petition.

3 Q. Has Citrix appealed?

4 A. Yes, Citrix appealed that decision.

5 Q. Would you please take a look at Plaintiff's Exhibit 34.

6 What is that, Mr. Cheung?

7 A. That is the right of appeal notice. This is the -- the
8 notice we received from the patent office confirming the -- the
9 validity of my patent.

10 Q. Now, how long then did the reexamination process take to
11 reach this point anyway?

12 A. It actually took -- took two-and-a-half years of scrutiny.

13 Q. So the notice came out on what day again?

14 A. July of 2010.

15 Q. Okay. And when did you file this lawsuit here against
16 LogMeIn?

17 A. September 2010.

18 Q. About two months later?

19 A. About two months later.

20 Q. What was it -- was there any connection between the July
21 action in the patent office and your decision to file the
22 lawsuit here against Citrix -- against LogMeIn?

23 A. Yeah. It was actually very important because, as you can
24 tell, we are a small company. So after the Citrix case was put
25 on hold by the -- by the Ohio judge pending reexamination, we

1 just had a hard time raising any additional financing to pretty
2 much anything for the company, so yet alone any additional
3 lawsuit. And we are also a small company without enough
4 resources to sue two potential infringers at the same time.

5 So like a long story short, we just have no ability like
6 legally and practically to launch any lawsuit until after the
7 patent office had confirmed the validity of my patent and denied
8 Citrix's petition. This is because -- it was very obvious that
9 any additional lawsuit because of the reexamination would
10 automatically be put on hold as well after that on hold date by
11 the Ohio judge.

12 Q. Well, when did you become aware of LogMeIn?

13 A. We became aware of LogMeIn sometimes in 2004.

14 Q. What did you do once you learned about LogMeIn to
15 investigate the LogMeIn service?

16 A. I did more or less similar things. I remember it was in
17 2005 sometimes.

18 Q. Tell the jury briefly what you did.

19 A. Briefly, what I did was similar to what I did to the
20 GoToMyPC product back in 2002, putting a protocol analyzer,
21 analyzing the -- the personal computer, communicating with the
22 LogMeIn locator server, and also monitoring the traffic between
23 the remote computer talking to the LogMeIn locator server and
24 understanding what's transferred back and forth. And then at
25 the end, I found more or less the same thing as what I found in

1 the GoToMyPC analysis, whereby the personal computer was
2 initiating pings to the LogMeIn locator server, pretty much the
3 same way as the I'm InTouch product.

4 MR. SHUNK: Your Honor, I see that -- I would like the
5 witness to look at Plaintiff's Exhibit 42 next, but I see that
6 I, in error, omitted it from my binder. I wonder if the marshal
7 could hand the witness Plaintiff's Exhibit 42.

8 THE MARSHAL: Which binder?

9 MR. CORRADO: What binder is it?

10 MR. SHUNK: I don't know.

11 BY MR. SHUNK:

12 Q. I don't want to slow things down. While they're looking for
13 that, Mr. Cheung, I'll move on to something else.

14 A. Yes.

15 Q. I'll come back to it. I'd like you to turn to your -- we
16 found it. Okay. So that's in binder -- binder number 1, sir.

17 Exhibit 42.

18 A. I think this is only up to 32.

19 Q. I don't know.

20 MR. SHUNK: But perhaps the marshal can hand this copy
21 to the witness. I apologize, Your Honor.

22 THE WITNESS: Thank you very much. Yes. I have the 42
23 here.

24 BY MR. SHUNK:

25 Q. What is 42?

1 A. 42 was a table we generate from the access record of
2 our signup database about who has signed up our product, who has
3 downloaded our product for trial or for anything, accessing.

4 Yeah.

5 Q. And what did you specifically look for in that database
6 that's reflected on 42?

7 A. In that database we were looking for some key words like
8 Marton Anka, 3AM Lab, or anything with an e-mail ended with .hu.

9 Q. Why were you looking for 3AM Labs?

10 A. Because 3AM Lab was the original company name of LogMeIn
11 before they changed names to LogMeIn.

12 Q. Why were you looking for registered users with a .hu e-mail
13 address?

14 A. Because, as you know, e-mail addresses of like .com are most
15 likely in North America, but anything was .hu would be from
16 Hungary.

17 Q. Now, if an individual is listed on this list, what would
18 they have been able to see about the I'm InTouch service when
19 they downloaded the software to use it?

20 A. Yeah. They will see the service.

21 Q. What does the -- well, let me ask you generally.

22 What does this record, 42, show about access to the I'm
23 InTouch service by Mr. Anka, if anything?

24 A. Well, it shows that the earliest date shown was April 21st
25 of 2004, and it also shows many other, but that is the earliest

1 date shown that someone by that name had access to our server
2 downloading something.

3 Q. Now, does this printout reflect the business records that
4 you keep in the ordinary course of business?

5 A. Yes, it does.

6 MR. SHUNK: I move the admission of Exhibit 4 --
7 Plaintiff's Exhibit 42.

8 MR. STONER: No objection.

9 THE COURT: It's admitted.

10 BY MR. SHUNK:

11 Q. What effect on 01's business did you believe LogMeIn was
12 having in 2005?

13 A. Simply put, the way that LogMeIn was giving away our product
14 for free without permission was like cutting our legs out from
15 under our company. We spent years and over \$25 million
16 developing, inventing, patenting, and commercializing I'm
17 InTouch, and the fact that they just giving away for free
18 without permission, how can we ever make money to grow the
19 company or even survive?

20 Q. Well, in 2005 then when your patent came out, why did you
21 wait until 2010 to sue LogMeIn?

22 A. As I briefly mentioned before, first of all, our patent
23 wasn't granted until August 9th of 2005. And practically
24 speaking, we were a small company without enough resources to
25 sue two potential infringers at the same time. And by that

1 time, 2005-2006, Citrix was a much bigger problem than LogMeIn
2 at that time. So that's -- we were suing the bigger competitor.

3 And making things worse, as you know, the Citrix case was
4 put on hold by the Ohio judge pending reexamination.

5 Q. Okay. And you've -- since you've already gone through that,
6 I'll stop you there and move on to the next thing because we
7 heard that testimony.

8 A. Right. Exactly.

9 Q. Now, let me ask you about Hitachi. Does your company have a
10 business relationship with Hitachi that relates to your
11 invention?

12 A. Yes, we do.

13 Q. Tell the jury about that.

14 A. Hitachi first came to 01 at the COMDEX trade show --
15 remember talking about the largest computer trade show in United
16 States -- in Las Vegas November 2000. There we publicly
17 announced the commercial availability of I'm InTouch. And
18 Hitachi came to our booth, saw that product, and was intrigued
19 by it. And since then we have been negotiating an agreement
20 whereby Hitachi was interested in providing a remote access
21 service product in Japan.

22 Q. What do they call your technology when it's offered in
23 Japan?

24 A. They rename it to something else. We call it a private
25 labeling. We provide a product. But the private branding as

1 Hitachi Do Mobile.

2 Q. Do Mobile?

3 A. Do Mobile.

4 Q. Please take a look at Exhibits 21 and 22. And those should
5 be in the exhibit binder.

6 A. The original one? Yes, I have it here.

7 Q. What are they?

8 A. They are the agreement we had signed with Hitachi.

9 MR. SHUNK: Your Honor, I move the admission of
10 Exhibits 21 and 22 for the Plaintiff.

11 MR. STONER: Object, Your Honor, irrelevant. It's not
12 tied to this patent at all.

13 MR. SHUNK: Your Honor, it's tied to the technology.

14 THE COURT: What relevance would that have?

15 MR. SHUNK: I'm sorry?

16 THE COURT: What relevance do they have? I understand
17 they're somewhat tied. But what relevance does it have? He's
18 raised that objection.

19 MR. SHUNK: Your Honor, we believe that the value that
20 Hitachi is willing to pay for the technology is a factor to be
21 considered in computing a reasonable royalty for the licensing
22 of the I'm InTouch product -- I'm sorry -- for licensing of the
23 '479 patent.

24 MR. STONER: Hitachi is not a licensee, Your Honor.

25 THE COURT: Objection sustained.

1 BY MR. SHUNK:

2 Q. Mr. Cheung, would you look at Plaintiff's Exhibit 18?

3 A. Yes.

4 Q. What is Exhibit 18?

5 A. Exhibit 18 is some snapshot of a video taken by Hitachi
6 during the COMDEX trade show.

7 Q. Does it accurately reflect your marketing of the I'm InTouch
8 service in 2000?

9 A. Yes, it does.

10 MR. SHUNK: Your Honor, I move admission of Plaintiff's
11 Exhibit 18.

12 MR. STONER: Object, Your Honor. Your Honor already
13 excluded this last Friday. This is their video of the trade
14 show.

15 MR. SHUNK: Your Honor, we're not -- we don't plan to
16 show the video, but we just want to offer these photographs to
17 demonstrate that in fact it was a real product in 2000.

18 THE COURT: Well, he's testified to that.

19 MR. SHUNK: He has.

20 THE COURT: Objection sustained. I don't see what the
21 photographs have to add to it. We're not scrutinizing what went
22 on. The fact it went on, he's testified to it.

23 BY MR. SHUNK:

24 Q. Have you received any help from the Canadian government for
25 the development and commercialization of the '479 patent

1 invention?

2 A. Yes.

3 Q. Tell the jury what sort of help you've received.

4 A. In Canada there is a program called SRED program. It stands
5 for Scientific Research and Experimental Development program,
6 whereby you get a certain percentage of your commercial
7 development project costs as a tax credit.

8 Q. Take a look at Plaintiff's Exhibit 120.

9 A. Yes. I have it here.

10 Q. What is it?

11 A. This is the report we generate each year to -- in order to
12 qualify for the SRED investment tax credit.

13 Q. What's the date of the report?

14 A. The date of report was written in November 2000, and it was
15 about the fiscal year ended November 31, 2000.

16 Q. Does this report show when your company first began seeking
17 tax credits for the work it was doing to commercialize I'm
18 InTouch?

19 A. Yes, it does.

20 MR. SHUNK: Your Honor, I move admission of Plaintiff's
21 Exhibit 120.

22 MR. STONER: No objection.

23 THE COURT: It's admitted.

24 BY MR. SHUNK:

25 Q. Where do you discuss the I'm InTouch service in the

1 document?

2 A. We discuss about the I'm InTouch project in page -- let me
3 turn to that -- 11705. The project code name is iServer.

4 Q. Is that an internal code name?

5 A. It was an internal code name.

6 Q. Generally -- without reading it, generally, what are you
7 describing in that section?

8 A. In that section we're talking about the -- the challenge or
9 the expected challenge that we will face when we were doing the
10 commercial product development on the iServer project.

11 Q. You discuss challenges. Did you have a functioning product
12 at that time?

13 A. Yes.

14 Q. Well, why were you talking about challenges still?

15 A. As you know, SRED documents describe the commercial project
16 development. And commercial product, as you can tell, continues
17 to face challenge to how you can improve, further improve over
18 the year. We're still facing challenge today.

19 And one thing I think worth mentioning is that there is a
20 difference between scientific invention and commercial product
21 development, just like there are many years between a concept
22 car and a actual production available product.

23 Q. Has the I'm InTouch service won any awards over the years?

24 A. Yes.

25 Q. Give the jury an example.

1 A. We won -- for example, in 2001 we won the TMC Product of the
2 Year award.

3 Q. Take a look in the box, would you, for Plaintiff's
4 Exhibit 24. What is it?

5 A. This is the actual plaque we receive representing that award
6 from TMC, Product of the Year.

7 MR. SHUNK: Your Honor, we would move admission of
8 Plaintiff's Exhibit 24 in the form of a photograph of the
9 plaque.

10 MR. STONER: No objection.

11 THE COURT: It's admitted.

12 BY MR. SHUNK:

13 Q. Give the jury one more example.

14 A. Another example was in 2006, we won the award from
15 VARBusiness magazine -- which was a tech --

16 VAR, V-A-R, yeah, VARBusiness magazine. It is called a Tech
17 Innovation award for the category of Best Business Tool.

18 Q. Would you look for and hold up Plaintiff's Exhibit 25?
19 What is that?

20 A. That was the actual plaque we receive winning that
21 VARBusiness magazine award of tech innovation in the category of
22 best business tool.

23 Q. Andrew --

24 MR. SHUNK: I'm sorry. Before I ask that question,
25 Your Honor, we move the -- again, the admission of Plaintiff's

1 Exhibit 25 in the form of a photograph of that plaque.

2 MR. STONER: No objection.

3 THE COURT: It's admitted.

4 BY MR. SKUNK:

5 Q. Now, Andrew, if LogMeIn had come to you in 2005 and said
6 we'd like to license your technology so we can make a competing
7 product in the United States and pay you a royalty, what would
8 you have wanted to receive as a royalty?

9 MR. STONER: Objection, Your Honor. This is a
10 speculative, hypothetical question.

11 THE COURT: It is speculative, isn't it?

12 MR. SHUNK: Your Honor, the question of the
13 hypothetical reasonable royalty negotiation between the two
14 parties is an important part of the *Georgia-Pacific* factors for
15 the --

16 THE COURT: I'm sure you'll have somebody testify about
17 that.

18 MR. SHUNK: We will, but --

19 THE COURT: Objection sustained.

20 BY MR. SKUNK:

21 Q. Andrew, I just have two more questions. This is the first
22 of those two.

23 Did you -- did you hear Mr. Stoner mention in his opening
24 statement that there was evidence, he believed, that you had
25 stolen some aspects of the computer code for I'm InTouch?

1 A. I heard that.

2 Q. Is there any truth to that?

3 A. Absolutely not.

4 MR. SHUNK: Thank you very much, Your Honor. That
5 concludes our direct examination.

6 THE COURT: All right. Cross-examine.

7 MR. STONER: May I proceed, Your Honor?

8 We also have binders of exhibits for the witness to use
9 during the examination which we can share with Your Honor and
10 opposing counsel --

11 THE COURT: All right.

12 MR. STONER: -- if the marshal would kindly pass up.

13 Also, copies of Mr. Cheung's transcripts of his
14 depositions.

15 CROSS-EXAMINATION

16 BY MR. STONER:

17 Q. Mr. Cheung, let's first give the jury some context. You
18 don't claim to have invented remote access to a computer, do
19 you?

20 A. No.

21 Q. Other people had invented that concept before you, correct?

22 A. I don't know if the invention or not, but it is a product
23 that -- like remote access has been there, as I testified, long
24 time ago.

25 Q. You know that you cannot patent what other people have

1 already invented, right?

2 A. Yes.

3 Q. You know that if you do patent what other people have
4 invented, your patent is invalid, right?

5 A. Yes.

6 Q. Now, you don't also claim to have invented remote access to
7 a computer across a firewall, do you?

8 A. We claim about remote accessing the specific way described
9 in my patent.

10 Q. But before you, there were other people who already invented
11 systems for accessing computers across a firewall, right?

12 A. There are other ways of doing the same. If there are such a
13 thing, yeah, they exist.

14 Q. Let me show you one example of that. It's in your binder.
15 It's Defendant's Exhibit 28. If you could, please --

16 A. We cannot find it. Which book? There are many books here.

17 Q. The three-ringed binder.

18 A. There is -- there is no three-ringed binder.

19 Q. Defendant's Exhibit --

20 A. I'm sorry. Which number are you talking about?

21 Q. Defendant's Exhibit 28.

22 A. Yes.

23 Q. Do you have that before you?

24 A. I -- I have it here.

25 Q. It's a patent to Mr. Crichton of IBM, correct?

1 A. Yes.

2 Q. You've seen it before, correct?

3 A. I have seen it before.

4 Q. It was filed in March 1997, correct?

5 A. Yes.

6 Q. That was before you did your work, right?

7 A. Yes.

8 Q. So this is work someone else invented before you, correct?

9 A. Yes.

10 Q. Now, if you could turn to Fig. 10 of that patent. Do you
11 have that before you?

12 A. Yes, I see it here.

13 Q. It shows a remote access system, doesn't it?

14 A. It shows some kind of system they describe.

15 MR. STONER: Your Honor, I offer exhibit -- Defendant's
16 Exhibit 28.

17 MR. SHUNK: No objection.

18 THE COURT: It's admitted.

19 MR. STONER: And, Your Honor, with your permission I'd
20 like to show the jury the diagram in Fig. 10 of this patent and
21 so I -- as I examine Mr. Cheung, they can follow along.

22 THE COURT: They can see it when they retire to
23 deliberate on their verdict. You ask him the question you want
24 to ask him.

25 MR. STONER: Sure.

1 BY MR. STONER:

2 Q. Fig. 10 of Mr. Crichton's patent shows two computers,
3 correct?

4 A. Yeah.

5 Q. It shows a server in between the two, correct?

6 A. It show three boxes.

7 Q. And it's called a SOCKS server, correct?

8 A. It's called SOCKS server, yes.

9 Q. It's connected to the Internet. It says Internet, right?

10 A. Yes.

11 Q. And there's a firewall protecting each of the computers,
12 correct?

13 A. Yes.

14 Q. It shows remote access communication between those two
15 computers across the firewalls, right?

16 A. Yes.

17 Q. Now, Mr. Cheung, I think you told the jury that prior art
18 remote access systems were useless for the Internet. Did you
19 say that?

20 A. Can you repeat what exact -- useless? I don't think I used
21 that word.

22 Q. My recollection, and tell me if I'm wrong, was you told the
23 jury that prior art remote access systems were useless for the
24 Internet. Did you say that?

25 A. I didn't say that.

1 Q. It's not true, is it?

2 A. I did not say that.

3 Q. Well, it's not true, is it?

4 A. I did not say useless.

5 Q. It's not true the prior art systems were useless for the
6 Internet?

7 A. It's not true that I said that. That's my answer.

8 Q. Well, it's also not true that prior art systems were useless
9 for the Internet, is it?

10 A. I'm sorry. I don't understand your question.

11 Q. All right. Now, March of 1997, when Mr. Crichton filed his
12 patent application, was actually years before you did your work,
13 right?

14 A. Can I take a look again at the date? Yeah, it was a few
15 months before I -- before I had my document.

16 Q. Well, Mr. Cheung, you told the jury in your direct
17 examination over and over again that you thought of your
18 invention in your patent in September 1997, correct?

19 A. Yes.

20 Q. That's not true, is it?

21 A. That's true.

22 Q. Well, Mr. Cheung, you remember you told the jury that you
23 submitted materials to the patent office trying to get your
24 patent speeded up so you could sue people? Do you remember
25 that?

1 A. Yes.

2 Q. One of those materials you submitted to the patent office
3 was a detailed sworn declaration about when you made your
4 invention, right?

5 A. Yes.

6 Q. Let's take a look at that, Defendant's Exhibit 177, in your
7 binder.

8 A. Yes, I have it here.

9 Q. Do you have it before you?

10 A. Yes.

11 Q. It is the Declaration of Andrew Cheung, correct?

12 A. Yes.

13 Q. That's you, correct?

14 A. That's me.

15 Q. You submitted this to the patent office in November 2002,
16 correct?

17 A. Yes.

18 Q. That was 11 years ago, right?

19 A. Approximately.

20 Q. You would agree you remember things better closer in time to
21 when they happened than ten years later, right?

22 A. That's not necessarily true.

23 Q. Well, let's look at what you told the patent office.

24 Declaration of Andrew Cheung. I, Andrew Cheung, the president
25 of 01 Communique Laboratory, Inc.

1 Do you see that? That's where you begin.

2 A. Yes, I see that.

3 Q. And you go on to say you duly swear, depose, and say.

4 Do you see that?

5 A. Yes.

6 Q. And then you say, quote, the invention described in U.S.

7 Application No. 09/595,533 (the "Application").

8 You see that?

9 A. Yes, I see that.

10 Q. That's the application that led to the '479 patent here,
11 right?

12 A. Right.

13 Q. And you go on to say, was conceived of in November 15, 1999.

14 Do you see that?

15 A. I see that.

16 Q. You wrote that November 15, 1999, letter in there, right?

17 A. Yes.

18 Q. So it was actually not 1997 but 1999 when you conceived your
19 invention, right?

20 A. It was 1997.

21 Q. So you didn't tell the truth to the patent office?

22 A. I told the truth to the patent office.

23 Q. You told the patent office it was conceived November 15,
24 1999, right?

25 A. I told the patent office what I believe at that time.

1 Q. Right. Now, you had lawyers help you file this declaration,
2 right?

3 A. Yes.

4 Q. You were trying to get the patent office to hurry up and
5 issue your patent, right?

6 A. Yes.

7 Q. You wanted to be very truthful at that time, right?

8 A. I always being truthful to the patent office.

9 Q. You were truthful when you say your -- your invention was
10 conceived November 15, 1999, correct?

11 A. That's what's -- what I believe at that time.

12 Q. And that was more than two years after Mr. Crichton filed
13 his patent application, right?

14 A. That day was.

15 Q. Let me show you another piece of prior art. Defendant's
16 Exhibit 27 --

17 MR. STONER: I'm sorry, Your Honor. I offer
18 Defendant's Exhibit 177.

19 MR. SHUNK: No objection.

20 THE COURT: It's admitted.

21 BY MR. STONER:

22 Q. Show you Defendant's Exhibit 27.

23 A. 27? I'm sorry. Which book are you referring to? These are
24 200-something.

25 Q. Defendant's Exhibit 27.

1 A. Yeah, I got like -- this is 200-something. I don't see
2 anything. Would it be in these books?

3 Q. Sorry.

4 MR. STONER: I'm sorry, Your Honor.

5 THE WITNESS: Thank you very much. Did you say 27?

6 BY MR. STONER:

7 Q. Yes.

8 A. Yes, I have it here.

9 Q. It's a patent with the numbers '888 that issued to
10 Mr. Hickman and Mr. Gough, correct?

11 A. Yes.

12 Q. You've seen it before, correct?

13 A. I've seen it before.

14 Q. Concerns a remote access system, correct?

15 A. Yes.

16 MR. STONER: Your Honor, I would offer Defendant's
17 Exhibit 27.

18 MR. SHUNK: No objection.

19 THE COURT: It's admitted.

20 BY MR. STONER:

21 Q. The '888 patent was filed February 1997, correct?

22 A. Yes.

23 Q. Before you did your work, no matter how you count that,
24 right?

25 A. Yeah, that was a few months before the September 1997.

1 Q. And maybe you can read the first sentence of the abstract of
2 this '888 patent, describing what its invention was.

3 A. I think you're taking things out of context, but I don't
4 mind reading it. The present invention permits virtually the
5 entire functionality of a computer system to be made accessible
6 over a network, such as the Internet or intranet.

7 Q. The first sentence of Mr. Hickman's '888 patent says, quote,
8 the present invention permits virtually the entire functionality
9 of a computer system to be made accessible over a network such
10 as the Internet or intranet, unquote, correct?

11 A. That's what it says in the first sentence.

12 Q. That says what you claim is your invention, right?

13 A. I would not agree.

14 Q. Does your invention, your patent, permit virtually the
15 entire functionality of a computer system to be made accessible
16 over a network such as the Internet or an intranet?

17 A. We didn't say that in the patent. If you want me to repeat
18 what the patent is, I wouldn't mind.

19 Q. So that does not describe your invention, correct?

20 A. That one sentence does not describe.

21 Q. And so if someone does what's in that sentence, they're
22 doing something different from your patent, right?

23 A. I don't know how to answer that question. You're taking out
24 of context. I cannot under -- understand your question. I'm
25 sorry.

1 Q. Mr. Cheung, let's turn to Fig. 1 of the '888 patent.

2 Fig. 1 shows a remote access system, correct?

3 A. Fig. 1 shows two computer and an Internet in between.

4 Q. The two computers, Fig. 1 of the '888 patent shows a host
5 computer, correct?

6 A. Yes.

7 Q. It shows a client computer, correct?

8 A. Yes.

9 Q. And it shows a -- the Internet in between the two, correct?

10 A. Yes.

11 Q. Cloud?

12 A. Yes.

13 Q. Looks just like your figure in your drawing, doesn't it?

14 A. I won't say it looks similar. It's the Internet.

15 Q. And it has servers in The Cloud connecting the host and
16 client computers, correct?

17 A. I couldn't say correct because it wasn't -- it wasn't shown
18 like that, but it has some server there. Doesn't show that it
19 was connecting them.

20 Q. There's a box called web server, correct?

21 A. Yes.

22 Q. Box called web page, correct?

23 A. Yes.

24 Q. Shows arrows showing communication between the host and
25 client computers, correct?

1 A. Yes.

2 Q. All of this was done before you did your work, right?

3 A. Yes.

4 Q. Let's talk now about the work you did. The I'm InTouch
5 product that you developed was introduced commercially in 2001,
6 correct?

7 A. Commercially it was -- it was announced available at COMDEX
8 show November of 2000.

9 Q. And you filed for a patent on that product, did you not?

10 A. We filed patent for the technology using that product, not
11 the product.

12 Q. The I'm InTouch product is covered by your '479 patent,
13 correct?

14 A. The -- I think the other way around. The patent covers that
15 product.

16 Q. And I'm sure you wish it were otherwise, Mr. Cheung, but the
17 I'm InTouch product did not do very well in the market, did it?

18 A. The I'm InTouch product -- if -- if you -- your question is
19 whether we were not doing very well because we have a product
20 out there called LogMeIn giving away for free, yes, the answer
21 is correct.

22 Q. When you introduced the I'm InTouch product in March 2001
23 commercially, LogMeIn was not in the market, was it?

24 A. They were not in the market, yes.

25 Q. They weren't in the market in 2002 either, were they?

1 A. Yes.

2 Q. They weren't in the market in 2003 either, were they?

3 A. Yes.

4 Q. And they weren't in the market the first third of 2004, were
5 they?

6 A. Yes.

7 Q. During that entire time, your I'm InTouch product did not do
8 very well, right?

9 A. At that time it was another competitor called Citrix. I
10 think we talk about that also, and also because during that time
11 it was the infant stage of the market.

12 Q. Mr. Cheung, I'd like you to turn back to a document written
13 before this lawsuit, to Defendant's Exhibit 47.

14 A. 47 is in the same binder? Yep, I see 47 here. Okay.

15 Q. Do you have that before you?

16 A. Yes, I do.

17 Q. This document, Defendant's Exhibit 47, is called an annual
18 information form, correct?

19 A. Yes.

20 Q. This an official publication that your company has to put
21 out to the public and your shareholders under Canadian
22 securities laws, correct?

23 A. Yes.

24 Q. And you as CEO, of course, review these to make sure they're
25 completely truthful and accurate, correct?

1 A. Yes.

2 Q. Defendant's Exhibit 47 is dated February 11, 2005, correct?

3 A. Yes.

4 Q. And in this document you're reporting to your shareholders
5 and to the world about your business, right?

6 A. Yes.

7 Q. And you're trying to tell them the truth, right?

8 A. Yes.

9 Q. Let's turn to page -- page 6 of Defendant's Exhibit 47. You
10 have that?

11 A. Yes.

12 Q. And there's a section of the document called Lack of
13 Revenue, Profitability, Liquidity and Capital Resources.

14 Do you see that?

15 A. Yes.

16 Q. In this paragraph you talk about your I'm InTouch product,
17 right?

18 A. Yes.

19 Q. And you say, quote, the future of the company is heavily
20 dependent on its ability to build revenue from its remote access
21 service I'm InTouch. The service -- service was first made
22 commercially available in March 2001, but was not effective in
23 capturing market share, unquote, correct?

24 A. Yes.

25 Q. Did I read that correctly?

1 A. I think word by word you read that correctly.

2 Q. Okay.

3 MR. STONER: I'd offer Defendant's Exhibit 47.

4 MR. SHUNK: No objection.

5 THE COURT: It's admitted.

6 BY MR. STONER:

7 Q. Now, I want to examine this statement that you and your
8 company made back in 2005 in Defendant's Exhibit 47.

9 You said you made your I'm InTouch service commercially
10 available in March 2001, correct?

11 A. Yes, that's what it says here.

12 Q. And as of February 2005, almost four years later, the
13 product was not effective in capturing market share, correct?

14 A. Yeah. If your question is about whether we are not
15 capturing market as effective as we like to be, the answer is
16 yes.

17 Q. Now, market share is a business concept that talks about all
18 the people out there who might want remote access service, how
19 many pick yours, right?

20 A. Yes.

21 Q. And capturing market share is persuading people to buy your
22 product as opposed to someone else's, right?

23 A. I think market share is about how -- like how many percent
24 you have in that market. It's not to persuade people buying
25 your product. It's kind of the other way around.

1 Q. Well, people have a choice whose products to buy, right?

2 A. Yes.

3 Q. Competition, right?

4 A. Yes.

5 Q. And some people choose to buy your product, right?

6 A. Yes.

7 Q. And some people choose to buy other products, right?

8 A. Yes.

9 Q. They have a choice?

10 A. Yes.

11 Q. And your product was not effective in capturing market
12 share?

13 A. As I say, we were not capturing market share as well as we'd
14 like to be.

15 Q. Even before LogMeIn was in the market, right?

16 A. Yes.

17 Q. And your company has lost money every year since you've
18 introduced your patented I'm InTouch product; isn't that true?

19 A. If your question, again, was because we have people out
20 there using our technology without permission, first of all by
21 Citrix, then by LogMeIn giving away for free, your -- my answer
22 is absolutely, yes.

23 Q. And all of this time before you filed this lawsuit, you
24 never sent a letter to LogMeIn saying they infringed, correct?

25 A. I think I testify, again, we cannot do that until the fall

1 of 2010.

2 Q. You didn't send a letter, correct?

3 A. No.

4 Q. You're a big enough company you can afford a postage stamp,
5 right?

6 A. We can certainly afford a postage stamp, but we cannot
7 afford the consequence of doing that.

8 Q. Do you ever pick up the phone and call Mr. Simon here and
9 say, you know, we have a patent that we're concerned that you're
10 violating? Did you ever do that?

11 A. No, we didn't do that because it may trigger very well like
12 a lawsuit that we cannot afford to fight.

13 Q. Did LogMeIn ever threaten to sue you?

14 A. No.

15 Q. Did LogMeIn ever say if you told them about a patent, they
16 were going to sue you?

17 A. They will understand that such an action would cause a
18 lawsuit.

19 Q. Well, Mr. Cheung --

20 A. We don't even have a patent at certain point in time.

21 Q. Before you had a patent, did you call up Mr. Simon and say,
22 you know, we have a patent that's coming out, we think you're
23 going to violate it?

24 A. We don't have the patent. We cannot do anything.

25 Q. You didn't try, did you?

1 A. How can we without a patent?

2 Q. Now, Mr. Cheung, the I'm InTouch product has never been
3 effective in capturing market share even today, correct?

4 A. Yes.

5 Q. Back in 2001, you decided to focus your business on your
6 patented product I'm InTouch, right?

7 A. By 2001, we don't have the patent so I -- I think I
8 cannot -- I cannot answer that question. There was some logical
9 error there. Sorry.

10 Q. Back in 2001 you decided to focus your business --

11 A. Yes.

12 Q. -- your business --

13 A. Uh-huh.

14 Q. -- on I'm InTouch, right?

15 A. That's correct.

16 Q. I'm InTouch became the main product of your company, right?

17 A. Correct.

18 Q. And it hasn't been successful, right?

19 A. As I said, again, it has not been as successful as we want
20 it to be.

21 Q. And there's a reason for that, right?

22 A. There is a reason.

23 Q. It has nothing to do with anyone else other than yourself,
24 correct?

25 A. I disagree.

1 Q. Well, Mr. Cheung, in today's world, as a software engineer
2 you know that being able to serve millions of people with a
3 computer service requires you to use multiple servers and
4 computers with multiple kinds of software, right?

5 A. That's what we call distributive processing, as I testified
6 before, load balancing.

7 Q. Yeah. That's the way LogMeIn's system works, right?

8 A. Well, the system has no balancing. You know, any system
9 serving more than a few hundred people would need load
10 balancing.

11 MR. STONER: Your Honor, I think I forgot to offer
12 Defendant's Exhibit 47.

13 MR. SHUNK: No objection.

14 THE COURT: It's admitted.

15 MR. STONER: Thank you.

16 BY MR. STONER:

17 Q. Well, Mr. Cheung, you talked to the jury about one of the
18 submissions you made to the Canadian government about your I'm
19 InTouch product asking for money, correct?

20 A. I shouldn't say asking for money. It was -- let me describe
21 again. It was something that you describe, a commercial product
22 development, and portion of the investment spent in commercial
23 development you can get back as a credit to -- as a tax credit.

24 Q. So you made submissions to the Canadian government asking
25 for a tax credit, right?

1 A. Yes.

2 Q. You described the work you were doing on your I'm InTouch
3 product, right?

4 A. Yes.

5 Q. To patent the product that's covered by your '479 patent,
6 right?

7 A. Yes.

8 Q. Let me show you one of those documents that Mr. Shunk did
9 not show you. It's Defendant's Exhibit 173.

10 A. 173. I think it is not in this book. Which book would
11 it -- this book only goes up to -- oh, yeah. 17 -- is it 173?

12 Q. Yes.

13 A. Yes. Right here.

14 Q. Do you have that before you?

15 A. Yes.

16 Q. This is one of the technical submissions that 01 Communique
17 Laboratory made to the Canadian government, correct?

18 A. Yes.

19 Q. And this one is dated June 30, 2004, correct?

20 A. Yes.

21 Q. Which is about four years after you filed your patent
22 application, right?

23 A. Yes.

24 Q. In this you describe work on the iServer or I'm InTouch
25 product, correct?

1 A. Let me turn to the -- which page are you referring to? It's
2 not a -- not a short document.

3 Q. It would be page 25.

4 A. Yes. Yes, I found it here.

5 Q. Do you have that before you?

6 A. Yes.

7 Q. Page 25 of Defendant's Exhibit 173 concerning project code
8 iServer, correct?

9 A. Yes.

10 Q. That was the code name for I'm InTouch, correct?

11 A. Yes.

12 Q. And in this document you describe some problems you're
13 having with the iServer project, right?

14 A. Yes.

15 Q. You were the chief engineer on this project, right?

16 A. Yes.

17 Q. And the problem you describe on page 25 is, quote, server
18 farming, unquote. Correct?

19 A. Yes.

20 Q. Server farming is using multiple servers, platforming,
21 right?

22 A. Server farming is about what I called before, load
23 balancing.

24 Q. Part of the distributed architecture?

25 A. Yes.

1 Q. All right. And in the first paragraph you say here, quote,
2 with the completion of many different phases of the iServer
3 project, we are beginning to encounter a related problem,
4 multiple servers platform.

5 Do you see that?

6 A. Yes.

7 Q. And let's go down the page to part 2-C where you talk about
8 the technological uncertainties, correct?

9 A. Yes.

10 Q. It says, quote, first of all, the biggest uncertainty is
11 that we are not sure at all whether the farming can work without
12 affecting the efficiency of data delivery throughput, unquote.

13 Correct?

14 A. Yes.

15 Q. I read that correctly?

16 A. Yes.

17 Q. That was true at the time in 2004, correct?

18 A. Yes.

19 Q. Even though you had filed your patent application four years
20 earlier, correct?

21 A. We always face problem in the commercial product development
22 as to which way work better, which way work more efficient, so,
23 yeah. As I said, even until today we're still facing problems.

24 Q. And the problem here is you weren't even sure your
25 architecture could function with multiple servers, right?

1 A. In terms of efficiency, yes.

2 Q. Well, the last sentence in that paragraph says, quote, now,
3 if the locator registration servers and locator portal servers
4 are located in different machines, we're not sure how the
5 architecture can still function, unquote. Correct?

6 A. As I said, what it meant, taking the whole context together,
7 was that --

8 Q. Mr. Cheung --

9 A. -- we have a problem -- we have a problem about an
10 efficiency in terms of a commercial project development.

11 Q. Mr. Cheung, did I read the document correctly?

12 A. Yes, you're reading the words word by word.

13 Q. I read it correctly, right?

14 A. You didn't read the whole thing, but you read one or two
15 sentence. Yeah.

16 Q. You told the Canadian government in 2004 that if you put
17 your locator registration servers and the locator portal servers
18 are located in different machines, we are not sure how the
19 architecture can still function, unquote. Correct?

20 A. Yes.

21 Q. You told the truth, right?

22 A. Yes.

23 Q. Now, you also got feedback from your customers on your
24 patented technology, correct?

25 A. Yes.

1 MR. STONER: Let me back up. I'm sorry, Your Honor.

2 I'd offer Defendant's Exhibit 173.

3 MR. SHUNK: No objection.

4 THE COURT: It's admitted.

5 BY MR. STONER:

6 Q. By the way, you never told the patent office about

7 Defendant's Exhibit 173, did you?

8 A. Which is the -- oh, the one that you showed me?

9 Q. Yes.

10 A. No.

11 Q. It talks about whether your server architecture could work
12 with multiple servers, correct?

13 A. Yes.

14 Q. And you say you're have -- you're not sure whether it will
15 function, correct?

16 A. As I said in the document paper here, we were talking about
17 how a commercial project development would, you know, be better
18 this way or that way in the efficiency's point of view.

19 Q. You never told the patent office about this document, did
20 you?

21 A. No.

22 Q. The next page of the document you actually say you built a
23 prototype trying to work this way and it crashed, right?

24 A. Yes.

25 Q. Did you tell the patent office that?

1 A. No.

2 Q. Let's talk about LogMeIn. LogMeIn introduced its product in
3 April 2004, right?

4 A. It's around the timeline. That's good.

5 Q. And when you were talking about that record of downloads of
6 I'm InTouch showing Mr. Anka downloaded your product, that was
7 after LogMeIn already had a product on the market, right?

8 A. I think it was around that time. It's around maybe a little
9 earlier, but it's around those months.

10 Q. LogMeIn already had a product on the market before they ever
11 looked at yours, right?

12 A. I don't know whether I can -- I qualify to answer that
13 question.

14 Q. Right. You looked at LogMeIn's product too, right?

15 A. Yes.

16 Q. And you put your protocol analyzer on it and all of that,
17 right?

18 A. Yes.

19 Q. Now, when LogMeIn introduced its product, you learned about
20 it right away, right?

21 A. Yeah, within a few months.

22 Q. You learned of LogMeIn by May 2004, the next month at least,
23 right?

24 A. Around that time.

25 Q. Right after they introduced the product, right?

1 A. As I said, within a few months.

2 Q. Now, this was before you had a patent, right?

3 A. Yes.

4 Q. LogMeIn introduced its product before 01 Communique had the
5 '479 patent, right?

6 A. Yes.

7 Q. Years before, right?

8 A. Yes, one year about.

9 Q. One year. Now, when you saw LogMeIn's product, you saw it
10 was a competitor, right?

11 A. Yes.

12 Q. They had a remote access product on the market, right?

13 A. Yes.

14 Q. They were offering it for free, right?

15 A. Yes.

16 Q. Or offering a version of it for free, right?

17 A. Yes.

18 Q. And you saw that as a competitive threat?

19 A. Yes.

20 Q. And, in fact, you reported that to your company officially,
21 didn't you?

22 A. Yes.

23 Q. Let's take a look, just so this is documented, in
24 Defendant's Exhibit 167.

25 A. Yes, I have it here.

1 Q. Defendant's Exhibit 167 are some minutes to the board of
2 directors of your company, 01 Communique Laboratory, correct?

3 A. Yes.

4 Q. Dated December 13, 2004, right?

5 A. Yes.

6 Q. And the board of directors are the people who run your
7 company, right?

8 A. Yes.

9 Q. You're one of them, right?

10 A. I'm one of them.

11 Q. And you're describing what happened at a meeting in
12 December 2004 and documenting it for history, right?

13 A. Yes.

14 Q. The meeting was at the Mississauga Golf and Country Club,
15 right?

16 A. Yes.

17 Q. That's where you held your board meetings?

18 A. Yes.

19 Q. And you talked about LogMeIn, right?

20 A. Yes.

21 Q. Let's turn to page -- they're not numbered. It's the third
22 page of Defendant's Exhibit 167.

23 A. Yes, I have it here.

24 Q. There's a report from CEO, correct?

25 A. Yes.

1 Q. That's you, right?

2 A. Correct.

3 Q. And it says, Mr. Andrew Cheung reported that a new
4 competitor called LogMeIn had been caressively offering a free
5 remote control service, unquote.

6 Do you see that?

7 A. Yes.

8 Q. That's true, right?

9 A. True.

10 MR. STONER: I'd offer Defendant's Exhibit 167.

11 MR. SHUNK: No objection.

12 BY MR. STONER:

13 Q. So -- by the way, you don't have a problem with companies
14 giving away products for free, do you?

15 A. Well, if your question is do I have a problem people giving
16 away their product for free, I never have those kind of problem.
17 But I -- but I do have problem with people giving away my
18 technology for free without permission.

19 Q. You don't have a problem with the concept of people giving
20 away products for free, right?

21 A. I say it again. I don't have problem with, again, the
22 concept people give away their product or technology for free,
23 but I do have a big problem if they are giving away our product
24 and my technologies for free.

25 Q. You don't know whether LogMeIn infringes or not, do you,

1 sir?

2 A. I'm not a patent attorney so I cannot draw a legal
3 conclusion. What I know was infringement was the -- is a legal
4 conclusion. I'm not capable to draw that legal conclusion. But
5 if you ask me do I believe LogMeIn infringe, I certainly
6 believe.

7 Q. Mr. Cheung, you're a software engineer, right?

8 A. Yes.

9 Q. You're the inventor or named as an inventor on this '479
10 patent, right?

11 A. Yes.

12 Q. You've been looking at LogMeIn for years, right?

13 A. Yes.

14 Q. You analyze their products, right?

15 A. Yes.

16 Q. And you testified under oath in this lawsuit before this
17 trial you didn't know whether LogMeIn infringed or not, right?

18 A. As I said, I am not a patent attorney so I do not know -- I
19 cannot draw to that legal conclusion. I know that infringement
20 is a legal conclusion. I have no capacity drawing to that
21 conclusion. If you ask me do I believe, then --

22 Q. I didn't ask --

23 A. -- that's why I'm saying --

24 Q. You don't know whether LogMeIn infringes or not, do you?

25 A. I do not know if they infringe or not.

1 Q. All right. Now --

2 THE COURT: Counsel, it's time for us to take a brief
3 recess.

4 MR. STONER: Sure.

5 (Recess taken at 3:47 p.m.)

6 NOTE: After the afternoon recess, the case on March
7 18, 2013 continues in the presence of the jury as follows:

8 JURY IN

9 THE COURT: All right.

10 MR. STONER: Thank you, Your Honor. First I wanted to
11 make sure that Defendant's Exhibit 173 was in evidence. It was
12 offered and there was no objection. I just wanted the record to
13 be clear.

14 THE COURT: It is admitted.

15 MR. STONER: Thank you.

16 BY MR. STONER: (Continuing)

17 Q. Mr. Cheung, I just wanted to go back briefly to one point.

18 You told the jury, I believe twice, that you spent over
19 \$25 million making the invention of the '479 patent?

20 A. I think what I said was we spent over \$25 million
21 developing, inventing, patenting, and commercializing I'm
22 InTouch.

23 Q. So, it wasn't all making the invention, right?

24 A. No.

25 Q. In fact, you don't know how much money you spent, if any,

1 before you made your invention, do you?

2 A. We didn't do that calculation.

3 Q. And you don't remember, do you?

4 A. I -- yeah, we have not done that calculation.

5 Q. And you don't know how much money you and your co-inventors
6 spent on it either, do you?

7 A. No.

8 Q. And there is nothing that could refresh your memory, is
9 there?

10 A. At this point sitting here, no.

11 Q. Now, let's talk about -- go back to LogMeIn and your
12 dealings with LogMeIn.

13 So, as of 2004, LogMeIn is in the market and you know about
14 them, correct?

15 A. Yes.

16 Q. You see they're a competitor, right?

17 A. Yes.

18 Q. You think that they may be taking away your business, right?

19 A. Yes.

20 Q. Now, you believe in competition, don't you, Mr. Cheung?

21 A. Yes.

22 Q. As long as it's fair competition, right?

23 A. Yes.

24 Q. You don't like unfair competition, right?

25 A. Correct.

1 Q. Patent infringement is a form of unfair competition, isn't
2 it?

3 A. Yes.

4 Q. Patent infringement, if there is any infringement, is unfair
5 competition, right?

6 A. Yes.

7 Q. So, let's move on to 2005. LogMeIn is still in the market,
8 correct?

9 A. Yes.

10 Q. Still a competitor, correct?

11 A. Yes.

12 Q. Threatening your business, right?

13 A. What's your question, I'm sorry?

14 Q. LogMeIn in 2005 is threatening your business, right?

15 A. Yes.

16 Q. They're taking business away from you, probably, right?

17 A. Yes.

18 Q. And, in fact, you wanted to get rid of LogMeIn in 2005,
19 didn't you?

20 A. If your question is about whether we want to stop them from
21 offering the free version, using our technology and giving it
22 away for free, absolutely, yes.

23 Q. Well, isn't it true in July of 2005 you wrote an e-mail
24 saying you wanted to get rid of LogMeIn, using those words?

25 A. Can you show me those lines?

1 Q. Yes. Look at Defendant's Exhibit 168 in your binders,
2 please.

3 A. Yes. I have it here.

4 Q. The bottom part is an e-mail that you wrote to Mark Reed,
5 correct?

6 A. Yes.

7 Q. And you wrote it on July 21, 2005, correct?

8 A. Yes.

9 Q. And if you go down the page, you're talking about Citrix,
10 correct?

11 A. Yes.

12 Q. And you say: They want to get rid of LogMeIn and MyWebEx as
13 much as we do. Correct?

14 A. Yes.

15 Q. So, as of July 21, 2005, you wanted to get rid of LogMeIn,
16 right?

17 A. Again, what I meant over there was we want to stop them
18 offering any free version, which is our technology.

19 Q. You didn't say anything about your technology, did you?

20 A. That's what I meant.

21 Q. Well, let's see. The very next month, August 2005, your
22 patent issues, right?

23 A. Yes.

24 Q. So, a month after you -- just a few weeks after you say you
25 want to get rid of LogMeIn, your patent issues, right?

1 A. Yes.

2 Q. But you can only get rid of a competitor using a patent if
3 they infringe; isn't that right?

4 A. Yes.

5 Q. So, if they don't infringe, you can't get rid of them using
6 the patent, right?

7 A. Correct.

8 Q. Now, you thought LogMeIn might be infringing, didn't you?

9 A. If you're asking me do I believe they infringed, yes, I
10 believe they infringed.

11 Q. Well, back in 2005, when your patent issued, you thought
12 LogMeIn might infringe, right?

13 A. I believe there is a chance that they would infringe.

14 Q. So, you investigated that question right away, didn't you?

15 A. Yes.

16 Q. You had your patent, correct?

17 A. Yes.

18 Q. You got a copy of LogMeIn's product and downloaded it,
19 right?

20 A. Yes.

21 Q. You hooked up your protocol analyzer to it, right?

22 A. Yes.

23 Q. Analyzed it and studied whether it infringed, right?

24 A. I shouldn't say so because I am not a patent attorney. I
25 can only compare some technical merits between the two product,

1 and I saw a lot of similarities.

2 Q. You got lawyers to help you do this analysis, didn't you?

3 MR. SHUNK: Objection, privileged.

4 THE COURT: He is not asking for anything that was
5 said. Objection overruled.

6 A. Sorry, what was your question?

7 BY MR. STONER: (Continuing)

8 Q. You got lawyers to help you do the analysis of whether
9 LogMeIn infringed, didn't you?

10 A. In that analysis, no, I don't. I didn't.

11 Q. Well, Mr. Cheung, do you remember giving a deposition in
12 this case?

13 A. Yes.

14 Q. And just so it's clear to everyone, what we're talking about
15 is before this trial there was a proceeding called a deposition,
16 right?

17 A. Yes.

18 Q. Where I asked you questions and you gave answers just like
19 we're doing here today, right?

20 A. Yes.

21 Q. And before you gave those answers, you swore an oath to tell
22 the truth, correct?

23 A. Yes.

24 Q. Just like you have done today, right?

25 A. Yes.

1 Q. And you did tell the truth, right?

2 A. Yes.

3 Q. And after the deposition you had a chance to review it, to
4 see if it was correct, and make any changes, right?

5 A. Yes.

6 Q. Let's take a look at page 151 of your deposition from
7 January 26, 2011.

8 MR. SHUNK: Do I have a copy, counsel?

9 A. I don't have 151 here.

10 MS. GURVICH: It's the one on top of the stack.

11 A. It's a very thick document. What page are you referring to?

12 BY MR. STONER: (Continuing)

13 Q. Turn to page 151.

14 MR. SHUNK: Pardon me, Your Honor, would counsel again
15 tell me the date of this?

16 Q. January 26, 2011.

17 Do you have that before you, Mr. Cheung?

18 A. Yes.

19 Q. And at this proceeding under oath, I asked you the following
20 question: Okay. Let me ask you this. In investigating whether
21 LogMeIn infringed, did 01 Communique engage lawyers to help in
22 that analysis?

23 Can you read the answer for the jury?

24 A. Yes. It says: You know, in the official analysis, yes, we
25 would.

1 Q. It was truthful testimony, correct?

2 A. Absolutely.

3 MR. STONER: Your Honor, I would offer Defendant's
4 Exhibit 168.

5 MR. SHUNK: No objection to that.

6 THE COURT: It is admitted.

7 BY MR. STONER: (Continuing)

8 Q. And after you did your analysis and your investigation, you
9 concluded LogMeIn did not infringe, didn't you?

10 A. No.

11 Q. Well, Mr. Cheung, would you turn back a few pages in your
12 deposition of sworn testimony, page 148.

13 A. Yes, I have it here.

14 Q. I asked you this question at your deposition. Question:
15 Isn't it true, Mr. Cheung, that in 2005 and 2006 you and your
16 counsel studied the LogMeIn product and concluded it did not
17 infringe your patent?

18 Do you see that?

19 A. Yes.

20 Q. Can you read the jury your answer.

21 A. It said: As I said, I don't recall. I don't recall this.
22 Yes or no, I don't know how to answer that.

23 MR. SHUNK: Objection, Your Honor, this is not
24 impeachment.

25 A. Once again, I was not a patent attorney. I cannot arrive at

1 any conclusion.

2 THE COURT: What's your objection?

3 MR. SHUNK: The objection is that what he is reading is
4 not impeachment of the prior statement of the witness.

5 THE COURT: Well, that's for the jury to decide.

6 Objection overruled.

7 BY MR. STONER: (Continuing)

8 Q. Well, let's look at what you did do or did not do back in
9 2005 after your patent issued and you investigated LogMeIn's
10 product.

11 You did not sue LogMeIn, correct?

12 A. Yes.

13 Q. And as we talked before, you didn't send a letter, e-mail,
14 or anything for five years, right?

15 A. Yes.

16 Q. You talked about the re-examination as the reason for delay
17 in suing, right?

18 A. It was one of the reasons.

19 Q. Well, the re-examination didn't start until the end of 2007,
20 right?

21 A. Yes.

22 Q. So there is no re-examination in 2005, right?

23 A. No.

24 Q. Correct?

25 A. Correct.

1 Q. There is no re-examination in 2006, correct?

2 A. Correct.

3 Q. There is no re-examination in most of 2007, right?

4 A. Correct.

5 Q. And during those three years, you never even considered
6 suing LogMeIn, did you?

7 A. During those three years, we have no ability to sue LogMeIn.

8 Q. Well, during those three years, Mr. Cheung, you never even
9 considered suing LogMeIn, did you?

10 A. As I said before, we have no ability to sue LogMeIn during
11 those three years.

12 Q. Mr. Cheung, you gave another deposition in your lawsuit
13 against Citrix. You have the transcript in front of you, and I
14 would like you to look that.

15 A. Okay. Can you direct me to which page?

16 Q. April 6, 2007, pages --

17 A. Is it this book? Which book are you referring to?

18 THE COURT: Look at the date on the front of it.

19 MS. GURVICH: It's that one, sir.

20 A. April 6, 2007, is that what you said?

21 BY MR. STONER: (Continuing)

22 Q. Correct. Pages 88 through 89.

23 A. Can you direct me to the page you are referring to?

24 Q. Page 88. Do you have that before you?

25 A. 88, right?

1 Q. Correct.

2 A. Yes, I have it here.

3 Q. All right. Let's -- for context, April 6, 2007, was
4 two-and-a-half years after your patent issued, right?

5 A. Yes.

6 Q. And three years or more after LogMeIn had been on the
7 market, correct?

8 A. Yes.

9 Q. And there was no re-exam going on at the time, correct?

10 A. Yes.

11 Q. You were asked the question, question: Has 01 ever
12 anticipated bringing any other lawsuits with respect to the '479
13 patent? Your answer was: No, not that I aware of.

14 Correct?

15 A. Are you referring to the bottom? Let me read that.

16 Q. Do you see the next page?

17 A. Yes. Yes. I see that.

18 Q. Question: So the only company that 01 has ever considered
19 suing over the '479 patent is Citrix and Citrix Online, is that
20 correct?

21 A. Yeah, at that time, yes.

22 Q. And your answer was, answer: Yes, at this point, yes, it
23 is.

24 Correct?

25 A. Yes.

1 Q. So, as of April 2007 you had never even considered suing
2 LogMeIn, right?

3 A. I don't know how to qualify that. You know, we haven't sued
4 LogMeIn at that time, that's correct.

5 Q. You never even considered doing it, right?

6 A. I don't know if I have considered or not, but certainly we
7 have not sued LogMeIn at that time.

8 Q. Well, let's -- just to be clear then, I am being perfectly
9 fair here, let's go down the page. And you were asked: Did 01
10 ever give thought to suing other companies other than Citrix?

11 And do you see your answer? You say --

12 A. Is it the same page?

13 Q. Same page, line 11, page 89.

14 A. Yeah. Okay.

15 Q. Did 01 ever give thought to suing other companies?

16 A. Yes, yes. I see it here, yep.

17 Q. Your answer was: Well, I think we qualify a little bit
18 better, that we -- we went to the steps, you know, analyzing and
19 then believe and go ahead and pursue a lawsuit, that's the only
20 one.

21 Do you see that?

22 A. Yes.

23 Q. And then you say: You dream about suing everybody in the
24 world. We always dream, but never.

25 Do you see that?

1 A. Yeah, exactly. What I meant was you dream about suing
2 people infringing your solution and -- yeah.

3 Q. You dream about suing everybody in the world, don't you?

4 A. Well, word by word taking out of context, I don't know how
5 to comment on that. But, yes, for infringers, I would say yes.

6 Q. Well, Mr. Cheung, the reason you didn't sue LogMeIn or even
7 send them a letter is because they didn't infringe, right?

8 A. Incorrect.

9 Q. Well, LogMeIn certainly never said they infringed, right?

10 A. I don't know if -- I think they won't say that.

11 Q. So -- well, let me back up. You are an officer of a
12 publicly traded corporation, right?

13 A. Yes.

14 Q. You have fiduciary duties to your company to protect it from
15 unfair competition, don't you?

16 A. Absolutely.

17 Q. You have a duty to stop competitors who are infringing your
18 patent, right?

19 A. Absolutely.

20 Q. And so, not only would you have done it if LogMeIn was
21 infringing it, you had a duty to do it, right?

22 A. I have a duty to protect the -- what we call the shareholder
23 value.

24 Q. And that includes protecting your company from unfair
25 competition, right?

1 A. If we can afford to do so.

2 Q. These are duties you have under Canadian law, right?

3 A. Yes.

4 Q. You are a Canadian citizen, correct?

5 A. Absolutely.

6 Q. Are you a citizen of any other place?

7 A. Hong Kong.

8 Q. Do you have duties under United States law as well?

9 A. Sorry, what was the question again?

10 Q. Do you have fiduciary duties under United States law?

11 A. I don't know.

12 Q. Well, if there is a company out there who is infringing your
13 patents, you have a duty to try to stop it, don't you?

14 A. If we can afford to, we would do it.

15 Q. But you never reported to your shareholders that LogMeIn
16 infringed, did you?

17 A. No.

18 Q. You did tell your shareholders about LogMeIn, right?

19 A. Yes.

20 Q. Said they were a competitor, right?

21 A. Yes.

22 Q. You never said they infringed, right?

23 A. I cannot say so because I am not a patent attorney. As I
24 said, I cannot draw that legal conclusion.

25 Q. You never said that they were hurting you in any way, did

1 you?

2 A. No. We are saying -- we are reporting about -- I don't
3 remember the wording, yeah, but I don't remember saying that
4 they infringed.

5 Q. You never said they stole your technology, did you?

6 A. Never used that word.

7 Q. Never said they were ruthless in offering a free service?

8 A. Never used those words.

9 Q. Now, there are many different ways to do remote access
10 without infringing the '479 patent, aren't there?

11 A. As I testified earlier, there were a lot of older solutions.

12 Q. And there are solutions today that don't infringe the '479,
13 right?

14 A. There are some solutions that don't infringe.

15 Q. Your patent has very specific requirements about what needs
16 to be in a system before it infringes, isn't it true?

17 A. Yes.

18 MR. STONER: And, Your Honor, I would ask to show
19 claim 24 to the jury, Exhibit 1 previously in evidence, if it's
20 okay with Your Honor.

21 MR. SHUNK: Objection --

22 THE COURT: I am not going to pass things around to the
23 jury now. They can see them when they retire to deliberate.

24 MR. STONER: Okay. Thank you.

25 BY MR. STONER: (Continuing)

1 Q. Well, just so we are clear, so when the jury looks at this,
2 your claim 24 is pretty long, right?

3 A. Yes.

4 Q. It has many requirements in it, right?

5 A. Yes.

6 Q. And every single one of those requirements has to be used
7 before it infringes, right?

8 A. As I am not a patent attorney, I don't know. I cannot
9 answer that question.

10 Q. Well, one of the things your patent claim requires is
11 something called a location facility, right?

12 A. Yes.

13 Q. And without a location facility, there is no infringement,
14 right?

15 A. Again, you ask me to draw some legal conclusion. I don't
16 think I have the capacity to do so.

17 Q. You and your company told the patent office in the
18 re-examination that for something to be a location facility, it
19 had to perform multiple specific functions, didn't you?

20 A. I was not directly involved in the re-examination process,
21 so I don't know how to answer that question.

22 Q. I thought you told Mr. Cheung and the jury earlier this
23 morning that you were involved in the re-examination process and
24 reviewing every document that was submitted?

25 A. Yes. Absolutely. But I am not a patent attorney, so I only

1 review, but in the capacity of technical point of view, not in
2 the attorney point of view. I don't know the patent process.

3 Q. One of the documents that you and your company submitted to
4 the patent office in the re-examination is Defendant's
5 Exhibit 126 in your binder. Could you please look at that.

6 A. Can I ask you a question? There are many binders here. Can
7 I put away these things for now?

8 Q. You can put them aside, yes.

9 A. Which one -- I am sorry. What was the number?

10 Q. The three-ringed binder at 126.

11 A. 126? Yes. I have it here.

12 Q. Now, this is a sworn declaration of an expert witness for 01
13 that you reviewed and your company submitted to the Patent
14 Office, correct?

15 A. Yes.

16 Q. And in this declaration you are talking about the meaning of
17 words in your patent, right?

18 MR. SHUNK: Objection, Your Honor. He said you, but
19 it's Dr. Ganger's declaration. I think it is unclear.

20 THE COURT: Well, that would be correct.

21 MR. STONER: I will correct it, Your Honor.

22 BY MR. STONER: (Continuing)

23 Q. In this declaration, your expert witness is telling the
24 Patent Office on your behalf what certain terms in your patent
25 mean, correct?

1 A. I shouldn't say it's on my behalf. I am not a patent
2 attorney. He is expressing his opinion.

3 Q. He is expressing his opinion. You reviewed it before he
4 submitted it, correct?

5 A. I reviewed it.

6 Q. And you approved it as true, correct?

7 A. I approved it.

8 Q. Now, let's take a look at some of the things Dr. Ganger told
9 the Patent Office.

10 A. Which page are you referring to?

11 Q. Let's turn first to page 2.

12 A. Yes. I have it here.

13 Q. And in paragraph 6 -- do you see that?

14 A. Yes.

15 Q. And it's a bit long, and I apologize for having to read
16 this. But it is talking about what the location facility in
17 your patent means, right?

18 A. I have no reason to disagree.

19 Q. It says: Location facility must create the communication
20 channel. Do you see that?

21 A. Yes.

22 Q. And if we just read the last sentence of paragraph 6, it
23 says, quote: One of ordinary skill in the art would not view
24 this language, and particularly its repeated use of forms of
25 "create" to be satisfied by an alleged location facility that is

1 simply used by some other component that creates the
2 communication channel. Rather, one of ordinary skill in the art
3 would understand it to require that the location facility itself
4 create the communication channel, unquote.

5 Do you see that?

6 A. I see that.

7 Q. So, the location facility is what in your system locates the
8 personal computer, right?

9 A. And creates the communication channel.

10 Q. It does both, right?

11 A. Yes.

12 Q. It must do both, right?

13 A. Yes.

14 Q. And if something doesn't do both, it's not a location
15 facility, right?

16 A. Yes.

17 Q. If we could turn now to paragraph 8 of Defendant's
18 Exhibit 126.

19 A. Paragraph 8, yes.

20 Q. And in this document submitted to the Patent Office in this
21 paragraph, Dr. Ganger says, quote: One of ordinary skill in the
22 art would also not view these "create" requirements to be
23 satisfied if the location facility only enables or facilitates
24 some other component that creates the communication channel.

25 Do you see that?

1 A. Yes.

2 Q. He goes on to say: These words, "uses," "enables,"
3 "facilitates," would have different meanings to one of ordinary
4 skill in the art than "create." Assisting some other component
5 that creates the communication channel is not the same as
6 creating the communication channel. The '479 patent claims
7 require the location facility to do the latter, correct?

8 A. Yes.

9 Q. That's correct with your understanding of your invention,
10 correct?

11 A. I understand the technicality of it, yes.

12 Q. It is a technical distinction, isn't it?

13 A. Yes.

14 Q. The difference between a component doing something itself
15 versus a component assisting or helping some other component do
16 it, right?

17 A. Depends how you say components. I think component has to be
18 well defined here.

19 Q. Well --

20 A. You are talking about components -- of components of
21 components. That is a different story from a component of
22 another aspect in the patent such as the personal computer or
23 the remote computer. It is a big difference there.

24 Q. There is no mention of personal computer or remote computer
25 in paragraph 8, is there?

1 A. But in the context, this is how -- this is what it is.

2 Q. Mr. Cheung, paragraph 8, there is no mention of personal
3 computer or a remote computer?

4 A. But it mentions about the components.

5 Q. Could you please answer my question. In paragraph 8 there
6 is no mention of a personal computer or a remote computer, is
7 there?

8 A. No.

9 Q. All right. And it is a technical distinction your expert is
10 making to the Patent Office, right?

11 A. Yes.

12 Q. There is a technical distinction in trying to show that
13 something is different from your invention, right?

14 A. Yes.

15 Q. And you agreed with it, right?

16 A. Technicality, I agree.

17 Q. And the Patent Office accepted it, right?

18 A. Yes.

19 MR. STONER: I would offer Defendant's Exhibit 126,
20 Your Honor.

21 MR. SHUNK: No objection, Your Honor.

22 THE COURT: It is admitted.

23 BY MR. STONER: (Continuing)

24 Q. So, Mr. Cheung, you don't know whether LogMeIn infringes,
25 but you are still here suing today, right?

1 A. Yes.

2 Q. When you issued this lawsuit, you explained why -- I'm
3 sorry.

4 When you started this lawsuit, your company started this
5 lawsuit, you told people why you were suing, didn't you?

6 A. Yes.

7 Q. You put out a press release, correct?

8 A. Yes.

9 Q. Let's look at Defendant's Exhibit 157.

10 A. Yes.

11 Q. This is a press release that your company issued on
12 September 9, 2010, correct?

13 A. Yes.

14 Q. It's the day you sued LogMeIn, right?

15 A. Yes.

16 Q. And you announced to the world, quote: 01 Communique files
17 a patent infringement lawsuit against LogMeIn Inc., and Dell
18 Inc., correct?

19 A. Yes.

20 Q. And you explained why, right?

21 A. Yes.

22 Q. And you say -- you are quoted in this press release, aren't
23 you?

24 A. Yes.

25 Q. You say, quote: Our plan is to participate in the growth of

1 the remote access communication industry by leveraging our
2 patents, quote, said Mr. Andrew Cheung.

3 Correct?

4 A. Yes.

5 Q. That's your plan, right?

6 A. Yes.

7 MR. STONER: I would offer Defendant's Exhibit 157.

8 MR. SHUNK: No objection.

9 THE COURT: It is admitted.

10 BY MR. STONER: (Continuing)

11 Q. Now, when you issued this press release, this is the first
12 time you had ever told anyone that LogMeIn infringed, right?

13 A. This is the first time that we told people that we are suing
14 LogMeIn because we believe they infringe. We didn't say that
15 they infringe. I cannot, again, draw that conclusion. That's a
16 legal conclusion.

17 Q. Well, whatever kind of conclusion it is, before September 9,
18 2010, when you filed this lawsuit, you had never told anyone
19 that LogMeIn infringed your patent, correct?

20 A. Correct.

21 Q. But one thing happened in the five years from the time your
22 patent issued until you filed this lawsuit, and that was LogMeIn
23 became more successful, right?

24 A. Yes.

25 Q. During those five years, your I'm InTouch product was not

1 doing very well in the market, right?

2 A. Again, if your question was about them very successfully
3 giving away our technology for free over those few years, yes, I
4 agree.

5 Q. You don't know if LogMeIn is using your technology, do you?

6 A. Again, if you are asking me do I believe they were using our
7 technology, yes, I strongly believe.

8 Q. You never told them that, did you?

9 A. No.

10 Q. But LogMeIn was becoming more successful, right?

11 A. Again, if your question was were they successfully giving
12 away our technology for free, generating 15 million users, my
13 answer to you is yes.

14 Q. Mr. Cheung, you and 01 certainly did not help LogMeIn
15 develop its remote access products, did you?

16 A. Again, if your question was helping means they are using our
17 technology, our hard-earned technology, yes, it is a big help.

18 Q. Mr. Cheung, let's go back to your sworn testimony before
19 this trial, page 243, of your deposition dated February 10,
20 2011?

21 A. I am sorry, you --

22 Q. Sure.

23 MR. SHUNK: What page, counsel?

24 A. February 10?

25 Q. 243.

1 A. Which page should I turn to?

2 Q. 243.

3 A. Two --

4 Q. 243.

5 A. Thank you.

6 Q. Do you have that page before you?

7 A. Yes.

8 Q. This is your sworn testimony before trial, correct?

9 A. Yes.

10 Q. You were asked the question: Sure. Did you -- I will begin
11 at the beginning, beginning on line 3.

12 Question: Did you or anyone else at 01 Communicate do
13 anything to develop or help develop the LogMeIn remote access
14 products?

15 And your answer first was: I'm sorry. What's your question
16 again?

17 Question: Sure. Did you or to your knowledge anyone else
18 at 01 Communicate do anything to develop or help develop the
19 LogMeIn remote access products?

20 Your answer: Do we help LogMeIn develop their product?

21 Question: Correct.

22 Your answer was: I'm not sure. I don't think so.

23 Do you see that?

24 A. Yes.

25 Q. Truthful testimony, sir?

1 A. It's absolutely truthful because, again, if your question
2 was about whether they were using our technology without
3 permission, that's a help.

4 But do we develop their code? No. So, it can be a
5 yes-or-no answer. It depends how your question meant.

6 Q. You didn't help LogMeIn develop its technology, did you?

7 A. We didn't help them doing the code.

8 Q. You didn't help them do the architecture?

9 A. Well, if your question again was are they using our
10 architecture in the '479 patent, the answer is yes.

11 Q. Mr. Cheung, did you or any of your software engineers ever
12 do one thing for LogMeIn?

13 A. If your question, again, was about -- it's a help to,
14 indirect help, was that they were using our disclosed
15 technology, yes, we did help, big time.

16 Q. February 2011 you said you don't think so, right?

17 A. I said I am not sure. I don't think so because the
18 different way you are answering -- questioning would have a
19 different answer.

20 Q. After you gave this testimony, you got a copy of the
21 transcript to look at, right?

22 A. Yes.

23 Q. You could review it. And if you thought there was something
24 incorrect, you could change it, right?

25 A. Yeah, if I look at it, yes.

1 Q. And did you look at this?

2 A. I don't remember looking at this.

3 Q. But you never changed it, that's for sure?

4 A. I don't think I looked at it.

5 Q. That was your choice?

6 A. It's my choice.

7 Q. Now, suing people is now part of your business, right?

8 A. It has become -- we are doing it as part of the business
9 like right now, of course.

10 Q. And, in fact, you are not even trying that hard anymore to
11 sell your products, are you?

12 A. We are still trying very hard to sell as much as we can.

13 Q. Didn't you tell your shareholders last year that you were
14 limiting your market activities to focus on suing people?

15 A. As I said, I try as much as I can financially capable.

16 Q. Did you say to your shareholders last year you were limiting
17 your marketing activities to focus on suing people?

18 A. Yes.

19 Q. You also sold part of your patent to another company for
20 them to sue people?

21 A. Sold patent? No.

22 Q. Licensed it?

23 A. No. My understanding --

24 Q. You sold to Wi-LAN, didn't you?

25 A. We have a business relationship with Wi-LAN.

1 Q. You gave them the right to sue people under your patent,
2 right?

3 A. No.

4 Q. You give them the right to license people under your patent?

5 A. We have a business relationship whereby Wi-LAN was providing
6 financial resources to 01 related to a number of potential
7 infringers.

8 Q. And Wi-LAN paid you no money for that, right?

9 A. Yeah, Wi-LAN provided financial resources related to a few
10 potential infringers.

11 Q. You get a cut of the money if they collect anything, right?

12 A. Sorry, can you repeat your question again?

13 Q. Sure. You get a cut of the money if Wi-LAN collects
14 anything, right?

15 A. I think more correct is Wi-LAN get a cut of the money 01
16 receive.

17 Q. They get 85 percent, right?

18 A. 85 percent? No.

19 Q. You told the jury that you have an office in Arlington,
20 Virginia, right?

21 A. Yes.

22 Q. You opened that office just a few weeks before you sued
23 LogMeIn, right?

24 A. Yes.

25 Q. You wanted to tell -- be able to tell people in the lawsuit

1 that you have a Virginia office, right?

2 A. That's the truth.

3 Q. Well, the only I'm InTouch product you sold out of that
4 office for five months after you opened it was to your lawyers
5 here, right?

6 A. Yes.

7 Q. Mr. Cheung, you are also trying to benefit personally from
8 your company's suing strategy, aren't you?

9 A. I assume so. I hope, at least.

10 Q. You granted yourself hundreds of thousands of dollars in
11 stock options, haven't you?

12 A. Over what period of time?

13 Q. Well, let's take in 2011. Do you have that in mind?

14 A. Yes. Yeah. What's your question again?

15 Q. 2011 is the year after you brought this lawsuit, right?

16 A. Yes.

17 Q. And in that year, your company lost \$3.2 million, right?

18 A. Yes.

19 Q. They lost money, right?

20 A. Yes.

21 Q. And in that year, you still gave yourself \$471,600 in stock
22 options, right?

23 A. You shouldn't say dollars. Those are stock options. Stock
24 option is part of compensation.

25 Q. It is true in 2011 you granted yourself \$471,600 worth of

1 stock options, right?

2 A. Those are stock options that allow you to purchase stock at
3 a certain fixed price, and it wasn't dollar.

4 Q. 2011 you also gave your chief financial officer,
5 Mr. Stringer, \$425,800 in stock options, correct?

6 A. Again, those are options that would allow Mr. Stringer to
7 exercise purchasing stock at a certain fixed price. It wasn't
8 cash compensation.

9 MR. STONER: So the jury can see what actually
10 happened, I'd like to offer Defendant's Exhibit 268, which is
11 01's financial statements, and Defendant's Exhibit 223, which
12 talks about stock option grants.

13 MR. SHUNK: One moment, Your Honor. I am searching for
14 those exhibits.

15 We have no objection.

16 THE COURT: They are admitted.

17 BY MR. STONER: (Continuing)

18 Q. You doubled your salary in 2011 too, correct?

19 A. Yes.

20 Q. Even though your company lost over \$3 million, right?

21 A. Yes.

22 Q. So, now you are coming in here and asking for \$110 million
23 from LogMeIn, right?

24 A. Yes.

25 Q. You want the jury to take \$100 million from LogMeIn and give

1 it to you?

2 A. Incorrect. It is given to the company, not me personally.

3 Q. You will benefit, right?

4 A. Sorry?

5 Q. You will benefit, right?

6 A. I hope so, as I said. Not necessarily.

7 Q. You never earned a dime from your patented technology, did
8 you?

9 A. We had some revenues. I think you cannot say that we didn't
10 earn a dime. I think it is a little bit rude saying that,
11 Mr. Stoner.

12 Q. You never -- I am sorry if I am rude. But you never made a
13 profit on it, right?

14 A. That's correct.

15 Q. You lost money on it year after year, right?

16 A. We lost money.

17 Q. And no one has ever paid you for using the patented
18 technology either, have they?

19 A. Of course they cannot pay us because there is a free version
20 out there.

21 Q. Well, as we talked about before, Hitachi is not a licensee
22 of yours, is it?

23 A. Hitachi is a licensee.

24 Q. Well, we are going to have to look at the Wi-LAN licensing
25 agreement to see where you represented the contrary. Can you

1 look at Defendant's Exhibit 175?

2 A. Yes.

3 Q. This is the Wi-LAN licensing agreement, correct?

4 A. Yes.

5 Q. You signed it in 2011, correct?

6 A. Yes.

7 Q. And on page 2 you make representations and warranties,
8 correct?

9 A. Representation, warranties, yes.

10 Q. And section 2.1.1 talks about patents, right?

11 A. Are you talking 2.1.1? Yes.

12 Q. It says: Owner is the sole owner in law and in equity of
13 the patents, and has not granted to anyone any release, license,
14 or other interest in the patents, with the exception of a
15 release granted to Dell Inc. and a license granted to
16 SingleClick Systems.

17 Correct?

18 A. Yes.

19 Q. No mention of Hitachi, right?

20 A. Well, my understanding was that anyone using our technology
21 is a licensee.

22 Q. Mr. Cheung, you made this representation to Wi-LAN, your
23 partner, right?

24 A. As I said, as far as I know -- correct me if I am wrong --
25 anyone using our product covered by the -- the patent is a

1 licensee.

2 Q. You mentioned Hitachi in your representations and warranties
3 to Wi-LAN?

4 A. No.

5 Q. And you told the truth to your partner, Wi-LAN?

6 A. As far as I know, it is the truth.

7 Q. This release granted to Dell, how much did Dell pay?

8 A. Dell paid -- I don't remember the exact amount, but it was
9 immaterial.

10 Q. Immaterial, meaning very small, correct?

11 A. Very small.

12 Q. They were getting out of the business anyway, right?

13 A. I don't know about their business model, but they agreed to
14 stop using -- offering their product as a result.

15 Q. And this license to SingleClick, you haven't got any money
16 from that either, have you?

17 A. No, we haven't.

18 MR. STONER: I would offer Defendant's Exhibit 175.

19 MR. SHUNK: Your Honor, I would object to that.

20 The document itself is irrelevant because its from -- it's from
21 2011 after this lawsuit began. Counsel has been able to elicit
22 whatever he believes is relevant from the document, but the
23 document itself shouldn't go into evidence.

24 MR. STONER: Your Honor, it has relevance beyond what I
25 did. This is an agreement dealing in the patent-in-suit -- a

1 license to the patent-in-suit. It's relevant to the worth of
2 the patent under the Georgia-Pacific factors.

3 MR. SHUNK: Your Honor, I don't think it has any more
4 relevance than the Hitachi licenses that you excluded earlier.

5 THE COURT: Objection sustained.

6 MR. STONER: Okay.

7 BY MR. STONER: (Continuing)

8 Q. Now, LogMeIn certainly never hurt your company by
9 \$110 million, did it?

10 A. LogMeIn hurt our company for probably more than that.

11 Q. Well, in the five years since your patent issues until you
12 sued, LogMeIn was not even hurting 01 enough to warrant telling
13 them you had a patent, correct?

14 A. I do not agree.

15 Q. Take a look at your deposition, Mr. Cheung.

16 A. Yes. Which one are you referring to?

17 Q. January 26, 2011.

18 A. What page do you want me to refer to?

19 Q. Page 179. Do you have that before you?

20 A. Yes, I have it here.

21 Q. Question: Am I correct in the five years until you sued
22 LogMeIn in 2010, you thought they were not hurting your business
23 enough to take the risk of notifying them you had a patent?

24 Your answer was: I don't know how to answer you. That
25 question is a combination of different things. I think -- was

1 it worthwhile? I -- I think again, you know, if -- if doing
2 something would result in something that we cannot afford at
3 that time whether it is bandwidth or resources, or, you know,
4 whatsoever, no, it's not worthwhile.

5 Do you see that?

6 A. Yes, I see that.

7 Q. Did I read it correctly?

8 A. You read it correctly.

9 Q. It is truthful testimony?

10 A. Yes.

11 Q. You certainly never told your shareholders LogMeIn was
12 hurting your company, did you?

13 A. Correct.

14 Q. And you don't know if LogMeIn took any sales away from you
15 or not, do you?

16 A. I should say I know they took sales away.

17 Q. Well, Mr. Cheung, do you still have your deposition there?

18 A. The same deposition you are referring to?

19 Q. Yes.

20 A. Yes.

21 Q. Page 193.

22 A. Yes, I have it here.

23 Q. This is your sworn truthful testimony as of January 2011,
24 correct?

25 A. Absolutely.

1 Q. After you brought this lawsuit, correct?

2 A. Absolutely.

3 Q. Question: Let me ask you to -- well, let me ask it this
4 way. Has LogMeIn taken sales away from 01 Communique?

5 Your answer was: Has LogMeIn taken sales away from 01?

6 Maybe. I don't know how to -- to exactly answer that question.

7 Maybe, maybe not.

8 Correct?

9 A. Yes.

10 Q. I read it correctly?

11 A. You read it correctly.

12 Q. And your answer was: Correct.

13 Right?

14 A. Yeah, at that time I believe, yep.

15 Q. Other companies came into the remote access market after
16 LogMeIn, correct?

17 A. You mean after LogMeIn?

18 Q. Yes.

19 A. Yep.

20 Q. Like TeamViewer, you've heard of them?

21 A. I have heard of them.

22 Q. They are a company who came into the remote access product
23 market after LogMeIn, correct?

24 A. Correct.

25 Q. And they are doing just fine, aren't they?

1 A. I don't know how well they do.

2 Q. Mr. Cheung, one final subject. You did not tell the Patent
3 Office about the prior art '888 patent, did you?

4 A. Yes.

5 Q. It's correct you did not?

6 A. I did not.

7 Q. Now, let's look at it again. It is Defendant's Exhibit 27.

8 A. 87? I think 87 is in another book. Yeah, it's not here.

9 Q. It may be down in that binder.

10 A. Thank you very much.

11 Q. Oh, it is Exhibit 87. I'm sorry.

12 27. It's Defendant's Exhibit 27.

13 A. Oh, 27. Yep, right here. Yes, I have it here.

14 Q. Do you have it here? And this is the patent that in
15 Fig. 1 shows a host and a client and the Internet in between the
16 two with Web server in between the two, correct?

17 A. Yes.

18 Q. It's the patent that talks about how it creates virtually
19 the entire functionality of a computer system to be made
20 accessible over a network such as the Internet or an intranet,
21 correct?

22 A. It talks about a certain way of doing that, yes.

23 Q. And it's work that was done before you did anything on your
24 '479 patent, correct?

25 A. Yeah, it was a few months before the September '97.

1 Q. You knew all about this patent, but you didn't tell the
2 Patent Office, right?

3 A. Yes.

4 Q. You know that in the patent -- when you deal with the Patent
5 Office, you have a duty of candor, correct?

6 A. Yes.

7 Q. You have a duty to tell the Patent Office the truth,
8 correct?

9 A. Yes.

10 Q. You have a duty to tell them all the material information
11 you know about, correct?

12 A. I should say that I should have the duty -- my understanding
13 was I have the duty to tell them about any relevant prior arts
14 that I think I would want the Patent Office to know about.

15 Q. You signed an oath when you filed the patent application
16 saying that, correct?

17 A. Yes.

18 Q. Let's look at Defendant's Exhibit 308.

19 A. Yes, I have it here.

20 Q. And this is a declaration, power of attorney, and petition,
21 correct?

22 A. Yes.

23 Q. You signed it, correct?

24 A. Yes.

25 Q. You signed it knowing that willful false statements may

1 jeopardize the validity of the application and any patent issued
2 thereon, correct?

3 A. Yes.

4 Q. And one of the things you say in this declaration was: We
5 acknowledge the duty to disclose information which is material
6 to the examination of this application in accordance with Title
7 37, Code of Federal Regulations, section 1.56, correct?

8 A. Yes.

9 Q. You knew you had this duty to the Patent Office, correct?

10 A. Absolutely.

11 Q. Now, let's talk about how you learned about the '888 patent,
12 okay?

13 A. Sorry, what was your question?

14 Q. Sure. The owner of the '888 patent sued your company for
15 infringing it, correct?

16 A. Yes.

17 Q. The company is called Accolade, correct?

18 A. Yes.

19 Q. They sued -- they sued 01 Communique saying your I'm InTouch
20 product infringed the '888 patent, right?

21 A. That's what they alleged.

22 Q. The I'm InTouch product is your product covered by the '479
23 patent here, correct?

24 A. Yes.

25 Q. It was in the re-examination, correct?

1 A. Yes.

2 Q. And Accolade sued and said your patented technology
3 infringes the '888 patent, right?

4 A. Incorrect. They said our product, I'm InTouch -- they
5 alleged the I'm InTouch product infringed, not the technology of
6 the -- our patent.

7 Q. Well, let's look exactly what was said. And turn to
8 Defendant's Exhibit 160, please.

9 A. Yes.

10 MR. STONER: Your Honor, I would offer Defendant's
11 Exhibit 308, the oath.

12 MR. SHUNK: Oh, no objection to the oath.

13 THE COURT: It is admitted.

14 BY MR. STONER: (Continuing)

15 Q. Defendant's Exhibit 160, do you have that before you,
16 Mr. Cheung?

17 A. Yes, I do.

18 Q. It is a complaint for patent infringement, right?

19 A. Yes.

20 Q. It was filed in a federal court like this one, right?

21 A. Yes.

22 Q. And it was filed by Accolade Systems against 01 Communique
23 and other companies, right?

24 A. Yes.

25 Q. And on the second page, paragraph 13, Accolade says that:

1 Certain products and/or services or technologies that infringe
2 at least one claim of the '888 patent, including but not limited
3 to those products known as I'm InTouch, correct?

4 A. Yes, correct.

5 Q. That's what they alleged, correct?

6 A. Yes.

7 Q. So, they are telling you they think that your I'm InTouch
8 technology infringes their '888 patent, right?

9 A. My understanding was that they are telling -- they are
10 alleging that the I'm InTouch product was infringing.

11 Q. And the I'm InTouch product uses the technology of your '479
12 patent, right?

13 A. Yes.

14 Q. Now, this lawsuit was filed in January 2007, right?

15 A. Yes.

16 Q. That's before the re-examination, right?

17 A. Yes.

18 Q. But this lawsuit is still going on when the re-examination
19 starts, right?

20 A. Yes.

21 Q. So, just to get the sequence down here, you are sued for
22 infringing the '888 patent, correct?

23 A. Yes.

24 Q. Then the re-examination of the '479 patent is started,
25 right?

1 A. Yes.

2 Q. And that -- and the lawsuit from Accolade in the '888 patent
3 is still going on, right?

4 A. I don't remember the exact time sequence. Maybe a little
5 off, but I don't know. I don't know whether I can qualify that
6 time sequence or not, but they are around the 2007 timeframe.

7 Q. We will get into the precise sequence.

8 A. Uh-huh.

9 Q. It's -- but once the re-examination started, you had this
10 duty of candor to the Patent Office to tell them about material
11 prior art, right?

12 A. Yes.

13 Q. And you certainly knew about the '888 patent when it
14 started, right?

15 A. Yes.

16 Q. And you never told the Patent Office about it, right?

17 A. Yes.

18 Q. You never told the Patent Office Accolade, the owner of that
19 patent, had said you infringed it, correct?

20 A. Yes.

21 Q. You didn't tell them anything about it, right?

22 A. Yes.

23 Q. But there's more. Let's fast forward a few months -- or
24 fast forward a few weeks. You then signed an agreement with
25 Accolade, correct?

1 A. Yes.

2 Q. And the agreement with Accolade gives the '888 patent owner,
3 Accolade, a cut of the money you get from suing Citrix under the
4 '479 patent, right?

5 A. Yes. I think -- yeah, right. Very immaterial. That's why
6 I don't remember. But, yeah, I think you are right.

7 MR. STONER: Well, let's -- first, I would offer
8 Defendant's Exhibit 160. Yes.

9 MR. SHUNK: Your Honor, I would object. The complaint,
10 it's hearsay. It is from this other company, Accolade. Counsel
11 has been able to use it for whatever other purpose, but the
12 complaint itself shouldn't go into evidence.

13 THE COURT: I think objection sustained.

14 MR. STONER: Your Honor, if I may. It's not being
15 offered for the truth of the matter asserted. It is offered to
16 prove notice to --

17 THE COURT: I understand. You have got the testimony
18 on that.

19 MR. STONER: Okay. Thank you.

20 BY MR. STONER: (Continuing)

21 Q. Now, in Accolade, this agreement -- which was written by
22 your lawyers here, correct?

23 A. Yes.

24 Q. It -- you signed it, correct? If you would look at
25 Defendant's Exhibit 203. Do you have that?

1 A. Yes, I have it here.

2 Q. This is the agreement with Accolade, correct?

3 A. Can I -- because it is a few years ago, can I just browse
4 through it quickly?

5 Q. Surely.

6 A. Yes, it is.

7 Q. You signed it, correct?

8 A. Yes.

9 Q. As the CEO, correct?

10 A. Yes.

11 Q. You initialed every page of this agreement, correct?

12 A. Yes.

13 Q. This is while the re-examination is going on, right?

14 A. Yes.

15 Q. In section 2.2 you say you are going to give additional
16 consideration to Accolade. If you get money from Citrix in your
17 lawsuit against them, you are going to give some of that to
18 Accolade, correct?

19 A. Yeah. That's why I said the -- it was very immaterial,
20 \$25,000. So I -- I did not remember when you said that, yes.

21 Q. You -- this was important enough to you that you initialed
22 every page of this agreement, right?

23 A. Yes.

24 Q. And the re-exam is going on, right?

25 A. Yes.

1 Q. In fact, it had started just a couple weeks earlier. So,
2 you knew all about it, right?

3 A. Yes.

4 Q. And then -- Your Honor, I would offer Defendant's
5 Exhibit 203.

6 MR. SHUNK: I would object again. It is not relevant.
7 We would stipulate that the company had notice of this '888
8 patent at that time. And so, I don't think there is any other
9 point to this document. It's not a license of the '479 patent.

10 THE COURT: Well, what is 203?

11 MR. STONER: It is the agreement between 01 Communique
12 and Accolade where 01 agrees to give Accolade, the owner of the
13 '888 patent, some money if 01 gets money from Citrix suing on
14 the '479 patent. It's notice not just of the patent, but of the
15 materiality of it.

16 MR. SHUNK: Well, we have heard testimony about it,
17 Your Honor, and we stipulate that they had notice. So, there is
18 no other point to this document. And it's about another piece
19 of litigation in an unrelated patent.

20 THE COURT: No, objection overruled. It will be
21 admitted.

22 You know, it is time for us to quit for today.

23 MR. STONER: Your Honor, I have about two more
24 minutes --

25 THE COURT: All right.

1 MR. STONER: -- if you want to finish up.

2 THE COURT: Well, with you. I don't know whether you
3 all have any more questions or not, but --

4 MR. SHUNK: I have only a short, maybe ten minutes of
5 redirect, but I know Your Honor has to --

6 THE COURT: Well, you can finish --

7 MR. SHUNK: You're right. I'm sorry, Your Honor. I
8 know --

9 THE COURT: I've got -- I will let you finish, but I'm
10 a little pressed tonight. Ordinarily I would, if it would make
11 any difference, I would stay later, but tonight I'm a little
12 pressed. Go ahead with your --

13 MR. STONER: I am sorry, Your Honor. I had forgotten
14 you had to leave.

15 BY MR. STONER: (Continuing)

16 Q. You never told the Patent Office about the '888 patent, did
17 you?

18 A. Yes.

19 Q. And your excuse is not withstanding signing this agreement,
20 it didn't even come up in your mind, right?

21 A. It's not an excuse.

22 Q. That's what reasoning you gave under oath why you didn't
23 disclose it, didn't even come up in your mind, right?

24 A. Yes.

25 MR. STONER: No further questions.

1 THE COURT: All right. Then we will adjourn until
2 tomorrow morning at 10 o'clock.

3 NOTE: The March 18, 2013 portion of the case is
4 concluded.

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CERTIFICATION

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14 I certify, this 18th day of March 2013, that the
15 foregoing is a correct transcript from the record of proceedings
16 in the above-entitled matter to the best of my ability.

17

18

19

/s/

20

Norman B. Linnell, RPR, CM, FCRR

21

22

/s/

23

Tracy Westfall, RPR, CMRS, CCR

24

25